

CHAPTER 3

Revenue and Finance

Article 3-4 Fiscal Year and Budgetary Procedure

- Sec. 3-4-10 Fiscal year designated
- Sec. 3-4-20 Estimates of expenditures and revenue required
- Sec. 3-4-30 Submittal of proposed budget by City Manager
- Sec. 3-4-40 Publication of notice for proposed budget
- Sec. 3-4-50 Taxpayer's right to protest
- Sec. 3-4-60 Review, revision and adoption of proposed budget
- Sec. 3-4-70 Appropriations and taxation; City Council authority
- Sec. 3-4-80 Emergency expenditures and transfer of funds
- Sec. 3-4-90 Emergency expenditures and transfer of funds; temporary loan

Article 3-5 Development Impact Fees

- Sec. 3-5-10 Definitions
- Sec. 3-5-20 Schedule of fees
- Sec. 3-5-30 Fee reduction or subsidy available to eligible parties
- Sec. 3-5-40 Fees eligible for reduction or subsidy
- Sec. 3-5-50 Application for reduction or subsidy
- Sec. 3-5-60 Determination by City Council
- Sec. 3-5-70 Written agreement required

Article 3-8 Contracts and Purchases

- Sec. 3-8-10 Definitions
- Sec. 3-8-20 Competitive bidding required
- Sec. 3-8-30 Powers and duties of Procurement Agent
- Sec. 3-8-40 Procurement and contracting procedures generally
- Sec. 3-8-50 Purchase requisition and adequate balance required
- Sec. 3-8-60 Councilman's conflict of interest; effect
- Sec. 3-8-70 Officers and employees seeking or accepting gifts or rebates prohibited
- Sec. 3-8-80 Officers and employees misrepresenting facts or influencing bids prohibited
- Sec. 3-8-90 Bidding procedure required for contracts and procurement of supplies and services
- Sec. 3-8-100 Bidding procedure required for personal property
- Sec. 3-8-110 Publication of notice inviting bids
- Sec. 3-8-120 Waiver permitted for bidding procedure
- Sec. 3-8-130 Bonds and deposits required
- Sec. 3-8-140 Submittal, opening and availability of bids
- Sec. 3-8-150 Rejection of bids
- Sec. 3-8-160 Award of contract; criteria for consideration
- Sec. 3-8-170 Award to other than lowest bidder; approval required
- Sec. 3-8-175 Change order to contract
- Sec. 3-8-180 Special consideration for award to resident business
- Sec. 3-8-190 Authority for award
- Sec. 3-8-200 Contractor's bond required; conditions
- Sec. 3-8-210 Waiver of bond
- Sec. 3-8-220 Division of contract prohibited
- Sec. 3-8-230 Informal bidding permitted
- Sec. 3-8-240 Minimum number of bids for informal bidding
- Sec. 3-8-250 Informal bid solicitation
- Sec. 3-8-260 Record of informal bids
- Sec. 3-8-270 Open purchase order for informal bid
- Sec. 3-8-280 Emergency purchase or contract procedure; City Manager authority
- Sec. 3-8-290 Mandatory requirements in all City contracts

	Sec. 3-8-300	Rules and regulations
Article 3-12	Employees' Pension Fund	
	Sec. 3-12-10	Created
Article 3-20	Municipal Cemetery Perpetual Care Fund	
	Sec. 3-20-10	Source and use of funds
	Sec. 3-20-20	Existing funds
Article 3-24	Alcoholic Beverages	
	Sec. 3-24-10	Definitions
	Sec. 3-24-20	Purpose of classifications
	Sec. 3-24-30	Classifications defined
	Sec. 3-24-35	Application fees
	Sec. 3-24-40	Operators' rate tax; special events permits
	Sec. 3-24-50	Payment of tax; applicability
	Sec. 3-24-60	Issuance of receipt and posting requirement
	Sec. 3-24-70	Delinquency of tax
	Sec. 3-24-80	City's right to collect all sums due
Article 3-28	Sales Tax	
	Sec. 3-28-10	Purpose
	Sec. 3-28-15	Distribution of revenues
	Sec. 3-28-20	Definitions and notice
	Sec. 3-28-30	Applicability
	Sec. 3-28-40	Imposition of tax
	Sec. 3-28-50	Schedule
	Sec. 3-28-60	Excess collected; remittance with amount due
	Sec. 3-28-70	Vendor to withhold vendor's fee or retainage
	Sec. 3-28-75	Taxable transactions, commodities and services
	Sec. 3-28-80	Exemption to sales and use tax
	Sec. 3-28-85	Proof of exemption; responsibilities of taxpayers; licenses
	Sec. 3-28-90	Administration
	Sec. 3-28-95	Penalties, interest and estimated taxes
	Sec. 3-28-100	Evasion of tax; violations and penalties
	Sec. 3-28-105	Overpayments; erroneous refunds; refunds
	Sec. 3-28-110	Hearings; appeals
	Sec. 3-28-115	Lien; assessments; collection
	Sec. 3-28-120	Limitations
	Sec. 3-28-125	Coordinated audit
	Sec. 3-28-130	Claims for recovery
	Sec. 3-28-140	Sales tax license required; term
	Sec. 3-28-150	Sales tax license required for separate places of business
	Sec. 3-28-160	Contents of application
	Sec. 3-28-170	Renewal of license; licensee's duties
	Sec. 3-28-180	License fee
	Sec. 3-28-190	License contents; posting; nontransferability
	Sec. 3-28-200	Exception to license
	Sec. 3-28-210	Unlicensed sales prohibited
	Sec. 3-28-220	Amendments
	Sec. 3-28-230	Violation; penalty
Article 3-32	Use Tax	
	<i>Division 1</i>	<i>General Provisions</i>
	Sec. 3-32-10	Purpose
	Sec. 3-32-20	Definitions
	Sec. 3-32-30	Imposition; amount
	Sec. 3-32-40	Application and exemptions

Sec. 3-32-45	Amendments
<i>Division 2</i>	<i>Building and Construction Use Tax</i>
Sec. 3-32-50	Distribution of revenues
Sec. 3-32-60	Payment requirements; exemption certificate
Sec. 3-32-70	Collection and administration
<i>Division 3</i>	<i>Motor Vehicle Use Tax</i>
Sec. 3-32-80	Imposition; amount
Sec. 3-32-90	Applicability
Sec. 3-32-100	Payment prerequisite to registration and issuance of title
Sec. 3-32-110	Collection
Sec. 3-32-120	Payment of proceeds by County to City
Sec. 3-32-130	Administration and enforcement agreements authorized
Sec. 3-32-140	Violation; penalty

Article 3-36 Telephone Utility Company Occupation Tax

Sec. 3-36-10	Levy of tax
Sec. 3-36-20	Effective date
Sec. 3-36-30	Filing of statement
Sec. 3-36-40	Failure to pay tax
Sec. 3-36-50	Inspection of records
Sec. 3-36-60	Local purpose
Sec. 3-36-70	Tax in lieu of other taxes, fees or charges
Sec. 3-36-80	Violations; penalties

ARTICLE 3-4

Fiscal Year and Budgetary Procedure

Sec. 3-4-10. Fiscal year designated.

The fiscal year of the City shall commence on the first day of January and end on the thirty-first day December of each calendar year. (Prior code §1-908)

Sec. 3-4-20. Estimates of expenditures and revenue required.

All offices, departments, boards, commissions and other spending agencies of the City shall, on or before the first day of September of each year, prepare and submit to the City Manager estimates of their expenditure requirements and their estimated revenues for the ensuing budget year. The estimates of expenditures shall be classified so as to set forth the data by funds, character and objects of expenditure. The budget shall be segregated as to offices, departments, boards, commissions and other spending agencies. The revenue estimates shall be classified as to funds and sources of income. (Prior code §2-111; Ord. 837 §1(part), 1975)

Sec. 3-4-30. Submittal of proposed budget by City Manager.

(a) On or before the twentieth day of September of each year, the City Manager shall arrange for the preparation of the budget and submit the proposed budget for the ensuing year to the City Council.

(b) The Council shall adopt an annual budget for the fiscal year. Such budget shall present a complete financial plan by fund and by spending agency within each fund and shall set forth the following:

(1) All proposed expenditures for administration, operation, maintenance, debt service and capital projects to be undertaken or executed by any spending agency during the fiscal year;

(2) Anticipated revenues for the fiscal year;

(3) Estimated beginning and ending fund balances;

(4) The corresponding actual figures for the prior fiscal year and estimated figures projected through the end of the current fiscal year, including disclosures of all beginning and ending fund balances, consistent with the basis of accounting used to prepare the budget;

(5) A written budget message describing the important features of the proposed budget, including a statement of the budgetary basis of accounting used and description of the services to be delivered during the fiscal year; and

(6) Explanatory schedule or statements classifying the expenditures by object and the revenues by source.

(c) Each fund in the budget must be balanced. The budget shall not provide for expenditures in excess of projected revenues and beginning fund balances.

(d) The budget shall set forth, in a supplemental schedule, each of the following:

(1) The total amount to be expended during the ensuring fiscal year for payment obligations under all lease-purchase agreements involving real property;

(2) The total maximum payment liability of the City under all lease-purchase agreements involving real property over the entire terms of such agreements, including all optional renewal terms;

(3) The total amount to be expended during the ensuing fiscal year for payment obligations under all lease-purchase agreements other than those involving real property; and

(4) The total maximum payment liability of the City under all lease-purchase agreements other than those involving real property over the entire terms of such agreements, including all optional renewal terms. (Prior code §2-112; Ord. 837 §1(part), 1975; Ord. 1714 §1, 2001)

Sec. 3-4-40. Publication of notice for proposed budget.

(a) A public hearing on the proposed budget and capital program shall be held by the City Council after receipt of the proposed budget. Notice of the time and place of such hearing shall be published at least one (1) time at least ten (10) days prior to the hearing and shall state that copies of the proposed budget and the proposed capital projects programs are available for public inspection in the office of the City Clerk.

(b) After the public hearing, the City Council may adopt the budget as presented or as amended. In amending the budget, the City Council may add or increase programs or amounts and may delete or decrease programs or amounts except those expenditures required by law, for debt service or for estimated cash deficit. Such amendments shall not increase the total expenditures for the overall budget as presented at the public hearing. If such amendment does increase the total expenditures, then another public hearing shall be held prior to adoption of the budget. (Prior code §2-113; Ord. 837 §1(part), 1975; Ord. 1714 §1, 2001)

Sec. 3-4-50. Taxpayer's right to protest.

Any taxpayer of the City shall have the right to file or register his or her protest with the City Council prior to the time of the adoption of the budget. (Prior code §2-114; Ord. 837 §1(part), 1975)

Sec. 3-4-60. Review, revision and adoption of proposed budget.

On the day set for consideration of such proposed budget, the City Council shall review the proposed budget, revise, alter, increase or decrease the items as it shall deem necessary in view of the needs of the spending agencies and the anticipated income of the City. The City Council shall then adopt a budget setting forth the expenditures to be made in the ensuing fiscal year. If the City Council increases the total proposed expenditures, it shall also provide for increased income in order that the total means of financing the budget shall be at least equal to or greater than the total of the aggregate proposed expenditures. In estimating the anticipated revenues, consideration must be given to unexpended surpluses and the history from prior years for the collection of revenues. (Prior code §2-115; Ord. 837 §1(part), 1975)

Sec. 3-4-70. Appropriations and taxation; City Council authority.

Before the beginning of the fiscal year, the City Council shall enact a resolution making appropriations for the ensuing fiscal year as provided by statutory law and City Charter. The amount

appropriated for the offices, departments, boards, commissions and other spending agencies shall not exceed the amounts therefor fixed in the budget as adopted. The income as estimated in the budget shall be allocated in the amounts and according to the funds specified in the budget for the purpose of meeting the expenditures authorized by the appropriation resolution. Nothing contained herein shall be construed to prohibit the City Council from making an appropriation to and for a contingent fund for use in cases of emergency. (Prior code §2-116; Ord. 837 §1(part), 1975; Ord. 1714 §1, 2001)

Sec. 3-4-80. Emergency expenditures and transfer of funds.

(a) In cases of emergency caused by act of God or the public enemy, or some contingency which could not have been reasonably foreseen at the time of adoption of the budget, the City Council may authorize the expenditure of funds in excess of such budget, by resolution duly adopted by a two-thirds ($\frac{2}{3}$) vote of the City Council in office at the time the vote is taken. Such resolution shall set forth in full the facts concerning such emergency and shall be detailed in the minutes of the meeting of the City Council at which such resolution was adopted.

(b) In cases of emergency caused by act of God or the public enemy, or some other contingency which could not have been reasonably foreseen at the time of adoption of the budget, the City Council may authorize, in accordance with law, the transfer of funds within the budget to meet such contingency. In the event such emergency requires a resolution authorizing the transfer of moneys between funds within the budget, such resolution shall set forth in full the facts concerning the emergency and shall be detailed in the minutes of the meeting of the City Council at which such resolution was adopted. (Prior code §2-117; Ord. 837 §1(part), 1975; Ord. 1714 §1, 2001)

Sec. 3-4-90. Emergency expenditures and transfer of funds; temporary loan.

In case of such emergency, as described in Sections 3-4-70 and 3-4-80, and the passage of a resolution authorizing additional expenditures in excess of the budget, and if there are funds of money available for such excess expenditure in some other fund which will not be needed for expenditure during the balance of the fiscal year, the City Council shall, by resolution, transfer such available money from such fund to the fund from which the excess expenditure is to be paid. In the event sufficient money is not available in any fund in the budget to meet the authorized excess expenditure, the City Council may by emergency resolution authorize the issuance of emergency notes. (Prior code §2-118; Ord. 837 §1(part), 1975; Ord. 1714 §1, 2001)

ARTICLE 3-5

Development Impact Fees

Sec. 3-5-10. Definitions.

(a) *Affordable housing* means a dwelling unit for occupancy by a tenant or homeowner whose income is eighty percent (80%) or less of the current median income for a four-person family in the Brighton-Adams County area, as set by the U.S. Department of Housing and Urban Development and more particularly described in Subsections (b) and (c) below.

(b) *Affordable owner housing* means a dwelling unit sold for occupancy by a homeowner whose income is eighty percent (80%) or less of the current median family income by family size for the Brighton-Adams County area, as set by the U.S. Department of Housing and Urban Development.

(c) *Affordable rental housing* means a dwelling unit for occupancy by a tenant whose income is sixty percent (60%) or less of the current median income by family size for the Brighton-Adams County area, as set by the U.S. Department of Housing and Urban Development.

(d) *Development impact fees* means moneys paid to the City by owners, subdividers and/or developers of land within the City, as part of the City's land use development application review and approval process, and in connection with the construction of new developments, and in consideration of new residential, commercial, industrial or other development requiring the subdivision of land or the construction of infrastructure or other improvements within the City, including but not limited to fees, charges, or cash-in-lieu payments for acquisition of park land and trails, park and trails improvements or park and trails development; open space acquisition and preservation; traffic infrastructure, transit infrastructure, signalization and other traffic-related improvements; bridges and crossings; water and sewer infrastructure, treatment facilities and other related improvements; water acquisition and storage facilities; drainage infrastructure and other related improvements; and such other and similar fees and charges adopted by the City Council from time to time whether by ordinance, annual fee resolution, or otherwise, provided that such fees and charges are reasonably related to the impacts resulting from new developments or subdivisions of land within the City and the construction of infrastructure or other improvements related thereto. (Ord. 1737 §1, 2002)

Sec. 3-5-20. Schedule of fees.

In addition to any and all other fees and charges imposed by this Article, and the ordinances or resolutions of the City, the owner, subdivider and/or developer of lands within the City shall pay development impact fees to the City, including but not limited to the fees described in Section 3-5-10 above, as the same may be set forth by ordinance, annual fee resolution or otherwise, and as the same may be amended by the City Council from time to time. (Ord. 1737 §1, 2002)

Sec. 3-5-30. Fee reduction or subsidy available to eligible parties.

Any person, sole proprietorship, partnership, corporation or nonprofit organization who wishes to construct affordable housing within the City limits and who demonstrates compliance with this Article shall be eligible to apply for a reduction or subsidy of the applicable development impact fees as provided herein. (Ord. 1737 §1, 2002)

Sec. 3-5-40. Fees eligible for reduction or subsidy.

The following fees shall be eligible for reduction, subsidy or reimbursement to eligible parties under this Article:

- (1) Water plant investment fees and/or water resource fees;
- (2) Sewer plant investment fees;
- (3) Traffic impact fees;
- (4) Drainage impact fees;
- (5) Park development fees;
- (6) Bridge and/or crossing fees;

- (7) Open space cash-in-lieu fees. (Ord. 1737 §1, 2002)

Sec. 3-5-50. Application for reduction or subsidy.

(a) An applicant desiring a subsidy or reduction of eligible development impact fees must submit a written application to the City Council, by and through the Director of Community Development (the "Director"). The City Council in its reasonable discretion and consistent with the considerations and factors set forth herein, together with other considerations and factors deemed pertinent to the specific application, may approve the fee reduction or subsidy, in whole or in part, if the applicant proves compliance with this Article; if the applicant demonstrates that a need for the specified housing exists within the City; and if the applicant provides adequate financial information demonstrating that the project is economically unfeasible without the requested fee reduction or subsidy.

(b) Each eligible person or qualified organization may apply for a development fee reduction or subsidy using the application form supplied by the Director of Community Development. Applications shall be submitted to the Director, who shall review the application materials and make an initial determination of (in)sufficiency. If in the Director's reasonable determination the application appears to be sufficient, the application shall be reviewed by a Committee, consisting of the City Manager, Director of Community Development, Director of Public Works, Director of Finance, Director of Parks and Recreation and the City Attorney. Within a reasonable time thereafter, the Committee shall make a written recommendation to the City Council, including a recommendation as to the appropriate amount of the fee reduction or subsidy, if any, which recommendation shall address, at a minimum, the following factors that are required to be set forth, demonstrated, described and otherwise explained by the applicant in the application materials:

(1) A description of the applicant's project and fee reduction proposal, including the number of units to be occupied by tenants or purchased and occupied by homeowners whose incomes meet the specific percentages of the median income by occupancy type;

(2) Whether or not there is a commitment by the applicant to a minimum ten-year or longer use period for affordable housing (tenant-occupied), or minimal five-year or longer use period for affordable housing (owner-occupied);

(3) Whether or not there is a commitment by the applicant to provide a minimum of five percent (5%) of the total units to one (1) or more special needs populations including, but not limited to, large-family (three [3] or more bedrooms), homeless, elderly, disabled and agricultural workers;

(4) Whether there is a commitment by the applicant to giving a priority to residents within the corporate limits of the City who are currently on a waiting list with the Brighton Housing Authority for affordable housing;

(5) Whether or not there are construction features of the subject project that lower the cost of housing for low income consumers;

(6) Whether or not the applicant has diligently applied for, pursued, obtained and received, or has been denied, other funds or subsidies, including state or federal funds, subsidies, grants or other financing tools or products. In this regard, all applicants hereunder are required to demonstrate to the City Council that other available funding sources have been diligently pursued; and

(7) Any other factors consistent with the intent of this Article that may support the application, that the Director may deem necessary or pertinent to the subject application, or which are otherwise set forth in an administrative regulation.

The application shall contain the name and address of each property owner, subdivider and/or developer, the above-referenced information and such supporting information as may be deemed necessary by the Director, the City Council or the applicant. (Ord. 1737 §1, 2002)

Sec. 3-5-60. Determination by City Council.

The City Council shall review the application, the Director's determination and the Committee's recommendations pursuant to the application standards, guidelines and factors set forth in Section 3-5-50 above, or any additional written guidelines and criteria established by the City Council from time to time to be used in determining and calculating the amount of any development impact fee subsidy or reduction. The City Council shall issue its written decision on the application within ninety (90) days after its receipt of such application from the Director. During such ninety-day period, the City Council may request such additional information from the applicant as may be deemed necessary or advisable for the City Council's proper consideration thereof. The City Council shall approve in whole or in part, approve with conditions or deny the application by written resolution. (Ord. 1737 §1, 2002)

Sec. 3-5-70. Written agreement required.

All reductions or subsidies granted by the City Council pursuant to this Article shall be reduced to a written agreement by and between all owners and developers of the property and the City. The written agreement shall be subject to such terms and conditions of this Article and shall guarantee performance or satisfaction of the eligibility criteria and other pertinent development conditions. The written agreement shall run with the land and be binding upon the heirs and successors of the owners until such time that the agreement expires. The written agreement shall require that all owners, subdividers and/or developers of the property shall be responsible for the performance and satisfaction of its terms and conditions. If the owners, subdividers or developers do not perform or satisfy any term or condition of the agreement, the City may revoke the grant of any reductions or subsidies and the property and the owners, subdividers and/or developers thereof shall be subject to all of the fees and requirements that would, but for the reductions or subsidies of this Article, have applied or been imposed and collected. (Ord. 1737 §1, 2002)

ARTICLE 3-8

Contracts and Purchases

Sec. 3-8-10. Definitions.

As used in this Article, the following terms shall have the meanings ascribed to them in this Section.

(1) *Bid* means an offer submitted by a prospective vendor in response to an invitation to bid issued by the City, which becomes a contract upon acceptance.

(2) *Bid bond* means an insurance agreement, accompanied by a monetary commitment, by which a third party (the surety) accepts liability and guarantees that the bidder will not withdraw the bid, the bidder will furnish bonds as required, and if the contract is awarded to the bonded

(insured) bidder, the bidder will accept the contract as bid, or else the surety will pay a specific amount.

(3) *Blanket order* means a contract under which a contractor or vendor agrees to provide materials, supplies, equipment and services to a purchaser on a demand basis; the contract generally establishes prices, terms, conditions and the period covered, although no quantities are specified; and shipments are to be made when and as required by the purchaser.

(4) *Change order* means a written alteration to a contract or purchase order, signed by a City-authorized person, in accordance with the terms of the contract, unilaterally directing the contractor to make changes.

(5) *Competitive sealed bidding*, also called *formal bid* or *formal advertised bid*, means the preferred process for acquiring materials, supplies, equipment and services, and for construction of public buildings, facilities or works in which an award is made to the lowest responsive and responsible bidder, based solely on the response to the criteria set forth in the Invitation to Bid (ITB); *competitive sealed bidding* does not include discussions or negotiations with bidders.

(6) *Construction contracts* includes contracts for the construction, installation, major maintenance or repair of public buildings, public facilities or public works.

(7) *Cooperative purchasing* means: a) procurement conducted on behalf of two (2) or more public procurement units; b) the combining of requirements of two (2) or more public procurement units in order to obtain the benefits of volume procurements and/or reduction in administrative expenses; or c) a variety of arrangements whereby two (2) or more units purchase from the same supplier using a single Invitation to Bid (ITB) or Request for Proposal (RFP). Cooperative groups include, but are not limited to: Multiple Assembly of Procurement Officials (MAPO), Cooperative Educational Purchasing Council (CEPC), National Association of Counties (NACO), and the State of Colorado.

(8) *Emergency conditions* includes procurement requiring the immediate procurement of materials, supplies, equipment or services, made to protect the public health, welfare or safety under emergency conditions, provided that such emergency procurement shall be made with such competition as is practicable under the circumstances.

(9) *Formal bid* means a competitive bid, which must be submitted in a sealed envelope and in conformance with a prescribed format, to be opened in public at a specified time. A *formal bid* is required for all procurements of ten thousand dollars (\$10,000.00) or greater with the exception of single-source or sole-source procurements.

(10) *Informal bid* means a competitive bid or price quotation for material, supplies, equipment and/or services that is conveyed by letter, telephone or other acceptable means and does not require a sealed bid, public opening or public reading of bids. Informal bids may be accepted for all procurements of one thousand dollars (\$1,000.00) or greater, but less than ten thousand dollars (\$10,000.00).

(11) *Multi-year contracts* means procurement contracts extending more than one (1) year. All contracts are subject to annual budget appropriation by City Council. All multi-year contracts are cancelable by the City without penalty.

(12) *Open market purchase* means a purchase for material, supplies, equipment and services for less than one thousand dollars (\$1,000.00), from any available source.

(13) *Professional service contracts* includes specialized design, management, consulting or similar service contracts which traditionally are in their nature unique and not susceptible to formal sealed-bid procedures but are subject to formal request for proposal procedures.

(14) *Procurement* means purchasing, renting, leasing or otherwise acquiring any material, supplies, equipment, services or construction; includes all functions that pertain to the acquisition, including description of requirements, selection and solicitation of sources and the preparation of award of contract and contract administration; the combined functions of purchasing, inventory control, salvage and disposal operations.

(15) *Proposal* means the document submitted by the offeror in response to the Request for Proposal (RFP) to be used as the basis for negotiation for entering into a contract. A proposal is usually requested in cases where the selection of a contractor or firm is to be made on the basis of the performance that is offered rather than on that of price alone and may require an outline of details such as the vendor's or firm's qualifications and experience and the identification of problems and proposed solutions in addition to details of pricing. *Request for proposal* means all documents, whether attached or incorporated by reference, utilized for soliciting competitive proposals.

(16) *Purchase order* means a written document to a vendor formalizing all the terms and conditions of a proposed transaction, such as a description of the requested items, delivery schedule, terms of payment and transportation costs and statement of destination. The issuance of a purchase order is a contractual agreement between the purchaser and the vendor.

(17) *Purchase request* means information or document transmitted by a City department requesting the procurement office to prepare a contract for a particular need. Also called a requisition. *Requisition* means an internal document by which a department sends details of materials, supplies, equipment and services required to the procurement office.

(18) *Purchasing* means the process of buying; to obtain material, supplies, equipment and services in exchange for money; the act and the function of responsibility for the acquisition of material, supplies, equipment and services. *Purchasing* includes determining the need, selecting the vendor or contractor, arriving at fair and reasonable price and terms, preparing the contract and purchase order, and following up to ensure timely delivery.

(19) *Responsible bidder or offeror* means a bidder or offeror who has the capability in all respects to perform fully the contract requirements, and the experience, integrity, perseverance, reliability, capacity, facilities, equipment and credit which will assure good faith performance.

(20) *Responsive bidder* means a vendor who has submitted a bid which conforms in all material respects to the requirements stated in the invitation to bid.

(21) *Service contracts* means and covers agreements, contracts or leases for the routine maintenance and repair of, insurance or rental on buildings, equipment or machinery.

(22) *Single-source procurement* means a contract for the procurement of material, supplies, equipment and services entered into after soliciting and negotiating only with one (1) source, usually because of the technology required or uniqueness of the service provided.

(23) *Sole-source procurement* means only one (1) vendor possesses the unique and singularly available capability to meet the requirement of the solicitation, such as technical qualifications or services from a public utility.

(24) *Supplies* includes all supplies, materials and equipment procured by the City or any of its departments or agencies. (Prior code §2-101; Ord. 839 §1(part), 1975; Ord. 1555 §1(part), 1998; Ord. 1703 §1, 2001)

Sec. 3-8-20. Competitive bidding required.

All purchasing of materials, supplies, equipment and services and contracting for construction contracts or professional services and all sales of obsolete or unusable property or supplies shall be accomplished by competitive bids or requests for proposals, except as provided, after due notice is given to prospective bidders or professional service providers. In circumstances necessitating sole-source procurement, under emergency conditions, or when only one (1) vendor or contractor is available in the area, procurement and contracts shall be effected with maximum economy to the City, without the necessity of requiring bids thereon; however, a full and complete justification therefor shall be prepared by the requesting department and filed with the documents relating to the transaction. (Prior code §2-102(1); Ord. 839 §1(part), 1975; Ord. 1555 §1(part), 1998; Ord. 1703 §1, 2001)

Sec. 3-8-30. Powers and duties of Procurement Agent.

The City Procurement Agent shall be the head and have the general supervision of the Procurement Division within the Finance Department. He or she shall perform all duties required by state statutes, City Charter and this Code and shall have the powers and duties for centralized control of the procurement function, including the procurement of materials, supplies, equipment and services and preparation and recommendation of award of service contracts as prescribed in this Article. (Prior code §2-102(2); Ord. 839 §1(part), 1975; Ord. 1703 §1, 2001)

Sec. 3-8-40. Procurement and contracting procedures generally.

- (a) All procurement and contracting shall be accomplished in the best interests of the City.
- (b) Whenever feasible, procurement shall be done in bulk in order to take full advantage of discounts. Departments shall be responsible for anticipating needs in timely fashion in order to consolidate and expedite procurement of the same type of materials, supplies, equipment, services or construction contracts.
- (c) City procurement or contracting shall be performed so as to secure for the City the highest quality materials, supplies, equipment and services at the least expense. Payment to vendors or contractors shall be expedited whenever possible in order to realize discounts and enhance the City's reputation as a responsible customer.
- (d) Full and open competition shall be encouraged in bidding for materials, supplies, equipment, services or construction contracts, and uniform bidding shall be discouraged. Specifications, bidding procedures, forms and contract terms shall be simplified as much as possible in order to encourage participation in bidding.
- (e) A vendor or contractor who performs unsatisfactorily or defaults on terms of his or her bid may be declared an irresponsible bidder.

(f) Cooperative purchasing shall be implemented when feasible and in the best interest of the City and shall be accepted in lieu of City-generated formal bids. (Prior code §2-102(3); Ord. 839 §1(part), 1975; Ord. 1703 §1, 2001)

Sec. 3-8-50. Purchase requisition and adequate balance required.

No purchases for materials, supplies, equipment or contract for services shall be undertaken until a purchase requisition has been signed and authorized by the Department Director or his or her designated and authorized representative and submitted to the Procurement Division. Except in emergencies, no order for delivery or performance on a contract or construction agreement shall be accomplished until the Finance Director shall have certified, after pre-audit, that there is to the credit of the using department a sufficient unencumbered balance in excess of all unpaid obligations to defray the amount of the requisition. A purchase requisition is required if the total purchase per vendor amounts to one thousand dollars (\$1,000.00) or more. (Prior code §2-103; Ord. 839 §1(part), 1975; Ord. 1555 §1(part), 1998; Ord. 1703 §1, 2001)

Sec. 3-8-60. Councilman's conflict of interest; effect.

(a) No member of the Council shall be interested directly or indirectly in any contract, including purchases or sales, with the City, except that such contract may be made by the City if the members of the Council in office at the time the vote is taken, having no such interest, shall unanimously determine that the best interests of the City shall be served by the making of such contract, and if either such contract is made after comparative prices are obtained or if the members of the Council having no interest shall unanimously determine that the obtaining of comparative prices is not feasible in such particular case.

(b) For purposes of this Article, ownership by a member of the Council or his or her immediate family of securities or of any beneficial interest in securities of any corporations shall not be deemed to create a prohibited interest under this Article, unless the aggregate amount of such securities or interest in such securities, so owned by such Councilman and the members of his or her immediate family, shall amount to ten percent (10%) or more of any class of the securities of such corporation then outstanding. (Prior code §2-104(1); Ord. 839 §1(part), 1975)

Sec. 3-8-70. Officers and employees seeking or accepting gifts or rebates prohibited.

Every officer and employee of the City is expressly prohibited from seeking or accepting, directly or indirectly, from any person to which any purchase order or contract is or might be awarded, any gift or money rebate. (Prior code §2-104(2); Ord. 839 §1(part), 1975; Ord. 1589, 1999)

Sec. 3-8-80. Officers and employees misrepresenting facts or influencing bids prohibited.

Every officer and employee of the City is expressly prohibited from knowingly:

- (1) Underestimating or exaggerating requirements to certain prospective bidders for the purpose of influencing bids; and/or
- (2) Misrepresenting competitor's prices, quality or service to obtain concessions. (Prior code §2-104(3); Ord. 839 §1(part), 1975)

Sec. 3-8-90. Bidding procedure required for contracts and procurement of supplies and services.

All materials, supplies, equipment, services and construction contracts, except as otherwise provided in this Article, with an estimated cost in excess of ten thousand dollars (\$10,000.00), but less than twenty-five thousand dollars (\$25,000.00), shall be awarded through formal bid procedures or the formal RFP process by the City Manager. All supplies, service and construction contracts, except as otherwise provided in this Article, with an estimated cost of twenty-five thousand dollars (\$25,000.00) or more, shall be awarded through the formal bid process or the formal RFP process by the City Council. After due notice inviting bids, purchase orders and contracts shall be awarded to the lowest responsive and responsible bidder. (Prior code §2-105(1); Ord. 839 §1(part), 1975; Ord. 1481 §1, 1996; Ord. 1555 §1(part), 1998; Ord. 1703 §1, 2001)

Sec. 3-8-100. Bidding procedure required for personal property.

All sales of obsolete or unusable personal property with an estimated value in excess of two thousand five hundred dollars (\$2,500.00) shall be sold through the formal bid process to the highest responsible bidder, after due notice inviting bids. The City may engage auction firms to sell all obsolete or unusable property, after soliciting the auction firms through the formal bid process or through cooperative purchasing. (Prior code §2-105(2); Ord. 839 §1(part), 1975; Ord. 1555 §1(part), 1998; Ord. 1703 §1, 2001)

Sec. 3-8-110. Publication of notice inviting bids.

Except for notices inviting bids for construction contracts, notices inviting bids shall be published at least once in an area newspaper selected for maximum impact on prospective bidders, at least five (5) days preceding the last day set for receipt of bids. Notices inviting bids for construction contracts shall be published at least once in an area newspaper selected for maximum impact on prospective bidders at least twenty (20) days preceding the last day set for receipt of bids unless the City Council determines that the required construction is an emergency, in which event the notice required hereunder shall be given at least five (5) days preceding the last day set for receipt of bids. The notice shall include a general description of the supplies or general services to be purchased or sold, or the facilities to be constructed, where bid specifications and forms may be secured, the deadline for submission of bids and the time and place for opening bids. (Prior code §2-105(3); Ord. 839 §1(part), 1975)

Sec. 3-8-120. Waiver permitted for bidding procedure.

For good cause shown, the City Manager may waive the formal bid procedure provided for herein for contracts in excess of ten thousand dollars (\$10,000.00) but less than twenty-five thousand dollars (\$25,000.00), and the City Council may waive the formal bid procedure for contracts twenty-five thousand dollars (\$25,000.00) or more. However, any such waiver shall be implemented only if there is first a determination that such waiver will be in the best interest of the City. (Prior code §2-105(4); Ord. 839 §1(part), 1975; Ord. 1481 §2, 1996; Ord. 1555 §1(part), 1998; Ord. 1703 §1, 2001)

Sec. 3-8-130. Bonds and deposits required.

When deemed necessary by the City Manager, bid bonds or deposits may be required. If the bid is not accepted or a bidder is unsuccessful, bid deposits shall be refunded. All notices of bid award shall be receipt acknowledged by the bidder or his or her personal representative. When a bid is awarded

but the successful bidder fails to enter into a contract within ten (10) days after the date of receipt of notice of award, the deposit may be forfeited. (Prior code §2-105(5); Ord. 839 §1(part), 1975)

Sec. 3-8-140. Submittal, opening and availability of bids.

- (a) Bids shall be submitted sealed and shall be identified as bids on the envelope.
- (b) Bids shall be opened in public at the time and place stated in the public notice unless all bidders are notified of a change by written addendum.
- (c) A tabulation of all bids received shall be available for public inspection. (Prior code §2-105(6); Ord. 839 §1(part), 1975; Ord. 1555 §1(part), 1998)

Sec. 3-8-150. Rejection of bids.

The City may reject all bids or parts of bids when it is determined to be in the best interests of the City to do so. (Prior code §2-105(7); Ord. 839 §1(part), 1975)

Sec. 3-8-160. Award of contract; criteria for consideration.

Contracts for purchase of supplies or construction work shall be awarded to the lowest responsible and responsive bidder. In determining "lowest responsible and responsive bidder," in addition to price, the City shall consider:

- (1) The ability, capacity and skill of the bidder to perform the contract or furnish the supplies required;
- (2) Whether the bidder can perform the contract or furnish the supplies promptly, or within the time specified, without delay or interference;
- (3) The character, integrity, reputation, judgment, experience and efficiency of the bidder;
- (4) The quality of performance on previous contracts;
- (5) Previous and existing compliance by the bidder with laws and ordinances relating to the contract or service;
- (6) Sufficiency of financial resources and ability of the bidder to perform the contract or furnish the supplies;
- (7) The quality, availability and adaptability of the supplies or contractual services to the particular use required;
- (8) The ability of the bidder to provide future maintenance and service; and
- (9) The response to the invitation for bids. (Prior code §2-106(1); Ord. 839 §1(part), 1975)

Sec. 3-8-170. Award to other than lowest bidder; approval required.

When it appears appropriate not to make the award to the lowest bidder, a full and complete statement of the reasons for the recommendation shall be prepared by the requesting department and

filed with the papers relating to the transaction. Such award must be approved by the City Manager or City Council as appropriate. (Prior code §2-106(2); Ord. 839 §1(part), 1975; Ord. 1481 §3, 1996)

Sec. 3-8-175. Change order to contract.

All change orders to construction contracts shall be processed through the office of the Finance Director. The Public Works Director and the Parks and Recreation Director shall have authority to approve individual change orders on City construction contracts up to two thousand five hundred dollars (\$2,500.00) per change order, not to exceed the greater of twenty-five thousand dollars (\$25,000.00) per contract or ten percent (10%) of the original contract amount. The City Manager shall have the authority to approve individual change orders on City construction contracts up to ten thousand dollars (\$10,000.00) per change order, not to exceed the greater of fifty thousand dollars (\$50,000.00) per contract or twenty-five percent (25%) of the original contract amount. All change orders greater than twenty-five thousand dollars (\$25,000.00) or change orders in aggregate greater than twenty-five percent (25%) of the original contract amount shall be approved by the City Council. (Ord. 1703 §1, 2001)

Sec. 3-8-180. Special consideration for award to resident business.

In those circumstances where a bid from a business located within the corporate limits of the City is as acceptable to the City as a bid of other vendors, special consideration may be given to awarding the contract to the Brighton business; the consideration shall be in the form of a five-percent reduction in the total bid amount when compared with other bids submitted, or a maximum of five thousand dollars (\$5,000.00) per total bid, whichever is less. *A business located within the corporate limits of the City* must operate a business inside the City limits that is on the City property tax rolls or must lease or rent a property for its business which is on the property tax rolls of the City, and which has a current City business license and is collecting and remitting sales tax for the City, if applicable. (Prior code §2-106(3); Ord. 839 §1(part), 1975; Ord. 1481 §6, 1996; Ord. 1555 §1(part), 1998; Ord. 1703 §1, 2001)

Sec. 3-8-190. Authority for award.

Awards to low and responsible bidders shall be approved as follows:

- (1) For contracts which do not exceed twenty-five thousand dollars (\$25,000.00), by the City Manager; and
- (2) For contracts in excess of twenty-five thousand dollars (\$25,000.00), by the City Council. (Prior code §2-106(4); Ord. 839 §1(part), 1975; Ord. 1481 §4, 1996; Ord. 1555 §1(part), 1998; Ord. 1703 §1, 2001)

Sec. 3-8-200. Contractor's bond required; conditions.

Any person entering into a contract with the City in the amount of twenty-five thousand dollars (\$25,000.00) or greater for the construction of any public building or the prosecution or completion of any public work shall be required before commencing work to execute, in addition to all bonds that may now or hereafter be required of him or her, a performance bond, a material and payment bond and a maintenance bond, all with good and sufficient sureties, to be approved by the City Manager, conditioned that such contractor shall properly perform all work required by the contract on behalf of the City and promptly make payments of all amounts lawfully due to all persons supplying or furnishing labor or materials, used or performed in the prosecution of the work provided for in such

contract, and will indemnify the City to the extent of any and all payments in connection with the carrying out of such contracts which the City may be required to make under the law. (Prior code §2-106(5); Ord. 839 §1(part), 1975; Ord. 1589, 1999; Ord. 1703 §1, 2001)

Sec. 3-8-210. Waiver of bond.

(a) For contracts which do not exceed twenty-five thousand dollars (\$25,000.00), the City Manager may, for good cause shown, waive a performance bond unless such bond is required by statute.

(b) For contracts above twenty-five thousand dollars (\$25,000.00), the City Council may, for good cause shown, waive a performance bond unless such bond is required by statute. (Prior code §2-106(6); Ord. 839 §1(part), 1975; Ord. 1481 §5, 1996; Ord. 1555 §1(part), 1998; Ord. 1703 §1, 2001)

Sec. 3-8-220. Division of contract prohibited.

No contract or purchase shall be divided to avoid the requirements of this Article. (Prior code §2-106(7); Ord. 839 §1(part), 1975; Ord. 1589, 1999)

Sec. 3-8-230. Informal bidding permitted.

Contracts for supplies and construction work with an estimated cost not exceeding ten thousand dollars (\$10,000.00) will be accomplished through the established informal, competitive bid process. (Prior code §2-107(1); Ord. 839 §1(part), 1975; Ord. 1555 §1(part), 1998; Ord. 1703 §1, 2001)

Sec. 3-8-240. Minimum number of bids for informal bidding.

All procurements through the informal bid process shall, wherever possible, be based on at least three (3) competitive bids and shall be awarded in accordance with the criteria set forth in Sections 3-8-170 through 3-8-230 of this Article. When informal bid awards exceeding one thousand dollars (\$1,000.00) are made to other than the lowest and/or most responsive bidder, a full and complete justification therefor shall be prepared by the requesting department and filed with the documents relating to the transaction. In order to expedite procurement under the informal bid process when making repetitive procurements, current cost history records may be reviewed to satisfy competitive bid requirements. (Prior code §2-107(2); Ord. 839 §1(part), 1975; Ord. 1555 §1(part), 1998; Ord. 1703 §1, 2001)

Sec. 3-8-250. Informal bid solicitation.

Bids may be solicited by direct mail announcement to prospective bidders, by facsimile or by telephone. (Prior code §2-107(3); Ord. 839 §1(part), 1975; Ord. 1555 §1(part), 1998)

Sec. 3-8-260. Record of informal bids.

A record shall be maintained of all open market bids solicited and submitted and such records shall be open to public inspection. (Prior code §2-107(4); Ord. 839 §1(part), 1975)

Sec. 3-8-270. Open purchase order for informal bid.

In order to deal with emergencies and reduce down-time of equipment, open purchase orders may be issued to specialized vendors or contractors. (Prior code §2-107(5); Ord. 839 §1(part), 1975)

Sec. 3-8-280. Emergency purchase or contract procedure; City Manager authority.

In case of an apparent emergency, which requires immediate purchase of supplies, services or letting or change of construction contract, regardless of cost, the City Manager is empowered to authorize the using department head to procure such emergency needs by informal, open-market procedure as expeditiously as possible, at the lowest obtainable price. A full report of the circumstances shall be given the City Council at its next meeting. (Prior code §2-108; Ord. 839 §1(part), 1975)

Sec. 3-8-290. Mandatory requirements in all City contracts.

Every contract executed by the City for construction of any public works or facility for the improvement of any public right-of-way or facility shall contain the following:

(1) A provision requiring the contractor performing the work for the City to comply with all applicable safety rules and regulations adopted by the Colorado Department of Labor and Employment or adopted by the City, whichever is more restrictive;

(2) A provision requiring the contractor to provide evidence of workman's compensation coverage and liability insurance naming the City as a named insured in the liability insurance policy. (Prior code §2-109; Ord. 839 §1(part), 1975)

Sec. 3-8-300. Rules and regulations.

The City Manager shall administratively adopt rules and regulations implementing the provisions of this Article and shall publish the same under separate cover. (Prior code §2-110; Ord. 839 §1(part), 1975)

ARTICLE 3-12

Employees' Pension Fund

Sec. 3-12-10. Created.

There is created the City of Brighton employees' pension fund, which fund is to be accounted for in the fiduciary funds of the City. (Ord. 864 §1, 1976; Ord. 1714 §2, 2001)

ARTICLE 3-20

Municipal Cemetery Perpetual Care Fund

Sec. 3-20-10. Source and use of funds.

All payments made and received for perpetual care of grave sites in the Elmwood Cemetery and Fairview Cemetery shall be kept separate and apart from all other funds of the City and shall be

known as the *municipal cemetery perpetual care fund*. The fund shall be invested and reinvested as the City Council may determine to be in the best interests of the City. The principal from the fund shall be used for the perpetual care and maintenance of the City cemeteries. The earnings from the investment of the fund shall be placed in the cemetery operating fund of the City. (Prior code §2-306; Ord. 853 §1(part), 1975; Ord. 1714 §4, 2001)

Sec. 3-20-20. Existing funds.

Funds heretofore existing in the municipal cemetery perpetual care fund shall continue to be a part of the fund, and shall be regulated by the terms of this Article and Article 2-44. (Prior code §2-307; Ord. 853 §1(part), 1975)

ARTICLE 3-24

Alcoholic Beverages

Sec. 3-24-10. Definitions.

As used in this Article, the following words or phrases shall have the following meanings, respectively:

(1) *Malt liquors* includes beer, and shall be construed to mean any beverage obtained by the alcoholic fermentation of any infusion or decoction of barley, malt, hops or any other similar products or any combination thereof in water, containing more than three and two-tenths percent (3.2%) alcohol by weight or four percent (4%) alcohol by volume.

(2) *Medicinal spirituous liquors* means alcohol beverage, excepting beer and wine, that has been aged in wood for four (4) years and bonded by the United States government and is at least one hundred (100) proof.

(3) *Operators* means persons licensed by law to sell 3.2 beer, malt, vinous and spirituous liquors, other than medicinal liquors, for beverage purposes at retail and who are engaged at any time during the calendar year in such operation within the City.

(4) *Person* means a natural person, partnership, association, company, corporation or organization or a manager, agent, servant, officer or employee thereof.

(5) *Spirituous liquors* shall be construed to mean any alcoholic beverage obtained by distillation, mixed with water and other substances in solution, and includes among other things: brandy, rum, whiskey, gin and every liquid or solid, patented or not, containing alcohol and which are fit for use for beverage purposes. Any liquid or solid containing beer or wine in combination with any other liquor except as above provided shall not be construed to be malt or vinous liquors, but shall be construed to be spirituous liquor.

(6) *3.2 beer* means malt liquor containing not more than three and two-tenths percent (3.2%) alcohol by weight or four percent (4%) alcohol by volume.

(7) *Vinous liquors* includes wine and fortified wines that contain not less than one-half of one percent (0.5%) and not exceeding twenty-one percent (21%) alcohol by volume and shall be

construed to mean alcoholic beverages obtained by fermentation of the natural sugar contents of fruits or other agricultural produce containing sugar. (Prior code §2-401; Ord. 1714 §6, 2001)

Sec. 3-24-20. Purpose of classifications.

The City finds, determines and declares that, considering the nature of the business of selling at retail 3.2 beer, malt, vinous and spirituous liquors for beverage purposes and the relation of such business to the municipal welfare, as well as the relation thereof to the expenditures required by the City and a proper, just and equitable distribution of tax burdens within the City, and all other matters proper to be considered in relation thereto, the classification of such business as a separate occupation is reasonable, proper, uniform and nondiscriminatory and the amount of tax imposed by this Article is reasonable, proper, uniform and nondiscriminatory and necessary for a just and proper distribution of tax burdens within the City. (Prior code §2-403)

Sec. 3-24-30. Classifications defined.

The business of selling at retail any fermented malt beverages and malt, vinous or spirituous liquor other than medicinal liquor, for beverage purposes is defined and separately classified as such occupation for the purposes of this Article as follows:

- (1) *Class A operators* means all operators who are licensed to sell malt, vinous or spirituous liquors for consumption on the premises where the principal business is the sale of such beverages at retail for consumption on the premises and where sandwiches and light snacks are available for consumption on the premises.
- (2) *Class B operators* means all operators, other than Class A operators as defined in Subsection (a), who are licensed to sell malt, vinous and spirituous liquors for consumption on the premises.
- (3) *Class C operators* means all operators who are licensed to sell malt or vinous liquors only by the drink for consumption on the premises.
- (4) *Class D operators* means all operators licensed as retail liquor stores to sell in original containers malt, vinous or spirituous liquors for consumption off the premises.
- (5) *Class E operators* means all operators licensed as drug stores to sell malt, vinous or spirituous liquors in original containers for consumption off the premises.
- (6) *Class F operators* means all operators licensed to sell malt, vinous or spirituous liquors at clubs.
- (7) *Class G-1 operators* means all operators licensed to sell only fermented malt beverages and who sell the same for consumption on the premises.
- (8) *Class G-2 operators* means all operators licensed to sell only fermented malt beverages and who sell the same solely in the original package or container for consumption off the premises.
- (9) *Class G-3 operators* means all operators licensed to sell only fermented malt beverages and who sell the same for consumption on the premises and who sell the same in the original

package or container for consumption off the premises. (Prior code §2-402; Ord. 784 §1, 1974; Ord. 915 §1, 1976)

Sec. 3-24-35. Application fees.

(a) Each application for a liquor license or a fermented malt beverage license filed with the City shall be accompanied by an application fee in an amount to cover actual and necessary expenses as follows:

- (1) For a new license, an application fee of five hundred dollars (\$500.00);
- (2) For a transfer of location or ownership of a license, an application fee of five hundred dollars (\$500.00);
- (3) For transfer of ownership of more than ten percent (10%) of the corporate stock in a corporate licensee, an application fee of one hundred dollars (\$100.00); and
- (4) For renewal of an existing license, an application fee of fifty dollars (\$50.00).

(b) Prior to operation of business under a tavern liquor license or a hotel and restaurant liquor license, a manager shall be registered as required by the state statutes. In addition to the application fees provided for in Subsection (a), each tavern licensee and hotel and restaurant liquor licensee shall pay to the City a registration fee of seventy-five dollars (\$75.00) at the time of registration of the manager of such licensed premises. (Ord. 1011 §1, 1979; Ord. 1714 §6, 2001)

Sec. 3-24-40. Operators' rate tax; special events permits.

There is levied and assessed for the year 1976 and for each year thereafter an annual occupation tax upon the business of selling fermented malt beverages, also known as 3.2 percent beer, and of selling malt, vinous and spirituous liquors, except medicinal liquors, in the City as said occupation has been herein classified as follows:

- (1) For all Class A operators, the sum of one hundred seventy-five dollars (\$175.00);
- (2) For all Class B operators, the sum of one hundred seventy-five dollars (\$175.00);
- (3) For all Class C operators, the sum of one hundred seventy-five dollars (\$175.00);
- (4) For all Class D operators, the sum of one hundred fifty dollars (\$150.00);
- (5) For all Class E operators, the sum of one hundred fifty dollars (\$150.00);
- (6) For all Class F operators, the sum of fifty dollars (\$50.00);
- (7) For all Class G-1 operators, the sum of one hundred fifty dollars (\$150.00);
- (8) For all Class G-2 operators, the sum of fifty dollars (\$50.00);
- (9) For all Class G-3 operators, the sum of one hundred seventy-five dollars (\$175.00);
- (10) For all special event permits for fermented malt beverages, the sum of ten dollars (\$10.00) per day;

(11) For all special event permits for malt, spirituous or vinous liquors, the sum of twenty-five dollars (\$25.00) per day. (Prior code §2-404; Ord. 784 §2, 1974; Ord. 915 §2, 1976)

Sec. 3-24-50. Payment of tax; applicability.

(a) Such tax shall be due and payable to the City Treasurer on January 1 of each year and shall be delinquent on February 1 of the same year. Prepayment of such tax may be made in the month of December preceding the due date.

(b) If any operator begins business subsequent to January 1 of any year, the tax required shall be the same as if the operator were doing business on January 1 of that year. No refund shall be made to any person who discontinues such business during the year. All taxes provided for in this Article shall be due as provided above, except all taxes provided for in this Subsection shall be due and payable upon the beginning of business and shall be delinquent ten (10) days thereafter.

(c) Interest shall accrue on all delinquent taxes from the day of delinquency until paid or collected, at the rate of one percent (1%) per month. (Prior code §2-405(part))

Sec. 3-24-60. Issuance of receipt and posting requirement.

(a) Upon receipt of such tax, it shall be the duty of the City Clerk to execute and deliver to the operator paying the tax a receipt showing the name of the operator paying the tax and the date of payment, and a permit showing the annual period for which such tax is paid and the place at which such operator conducts business.

(b) The operator shall, at all times during such year, keep such receipt posted in a conspicuous place in his or her place of business. (Prior code §2-405(part); Ord. 1589, 1999; Ord. 1714 §6, 2001)

Sec. 3-24-70. Delinquency of tax.

No delinquency in payment of the tax provided for in this Article shall be grounds for suspension or revocation of any such operator. by any licensing authority pursuant to the state statutes, and in performance of any duties imposed upon the City Council as a licensing authority by said statutes, the City Council shall exclude from consideration any delinquency in payment of the tax provided in this Article. (Prior code §2-406; Ord. 1589, 1999; Ord. 1714 §6, 2001)

Sec. 3-24-80. City's right to collect all sums due.

The City shall have the right to recover all sums due by the terms of this Article by judgment and execution thereon in a civil action, in any court of competent jurisdiction. Such remedy shall be cumulative with all other remedies provided in this Article for the enforcement of this Article. (Prior code §2-407)

ARTICLE 3-28

Sales Tax

Sec. 3-28-10. Purpose.

The purpose of this Article is to impose a sales tax on the sale of the tangible personal property at retail, or the furnishing of services as provided herein, upon every retailer in the City. (Ord. 635 §1, 1970; Ord. 1589, 1999; Ord. 1764 §1, 2002)

Sec. 3-28-15. Distribution of revenues.

(a) There is established a special fund of the City to be known as the City of Brighton Sales Tax Capital Improvement Fund (herein the "Capital Improvement Fund"). Moneys credited to such fund shall be used solely to provide and finance capital projects having long life, capital improvements to long life City assets and capital outlay for long life City assets, or to pay debt service on bonds or other obligations issued for the purpose of providing such capital improvements. Moneys credited to such fund shall not be available to be pledged or expended, by interfund transfer or otherwise, for any general purposes of the City.

(b) There is established a special fund of the City to be known as the City of Brighton Parks and Recreation Sales Tax Capital Improvement Fund (herein the "Parks and Recreation Capital Improvement Fund"). Moneys credited to such fund shall be used solely to provide and finance capital improvements consisting of City parks and recreational facilities, provided, however, that an amount equal to the net revenues derived from a rate of sales tax equal to ten one-hundredths percent (0.10%) shall be used solely to provide for and finance the acquisition, construction and improvement of trails and open space. Moneys credited to such fund shall not be available to be pledged or expended, by interfund transfer or otherwise, for any general purposes of the City. All or any portion of the moneys credited to the Parks and Recreation Capital Improvement Fund may be used to pay debt service on bonds or other obligations issued by the City to finance capital improvements consisting of City parks and recreational facilities or to finance the acquisition, construction and improvement of trails and open space, and such bonds or other obligations may be secured by all or any portion of the moneys credited to the Parks and Recreation Capital Improvement Fund.

(c) The net revenues derived from the City's three-and-three-fourths-percent sales tax shall be distributed and used as follows:

(1) The net revenues derived from a rate of sales tax equal to one percent (1%) shall be deposited in the Capital Improvement Fund and used solely for the purposes for which such fund may be used.

(2) The net revenues derived from a rate of sales tax equal to fifty one-hundredths percent (.50%) shall be deposited in the Parks and Recreation Capital Improvement Fund and used solely for the purposes for which such fund may be used.

(3) The net revenues derived from a rate of sales tax equal to fifteen one-hundredths percent (0.15%) shall be deposited into the General Fund and used solely for the operation and maintenance of trails, open space and City parks and recreational facilities, and such revenues are hereby pledged for such purpose.

(4) The net revenues derived from a rate of sales tax equal to two percent (2%) shall be credited to the General Fund and used for such purposes as the City Council shall determine.

(5) The net revenues derived from a rate of sales tax equal to ten one-hundredths percent (0.10%) shall either be deposited in the Parks and Recreation Capital Improvement Fund and used solely for the purposes for which such fund may be used, or shall be deposited into the General Fund and used solely for the operation and maintenance of trails, open space and City parks and recreational facilities. The allocation of such net revenues shall be in the sole discretion of the City Council and shall take into consideration, among other things, covenants made by the City in the issuance of its outstanding or future sales tax revenue bonds.

(d) Food tax rebate provisions. There is established a special account of the City to be known as the City of Brighton Food Tax Rebate Account. Moneys credited to such account shall be derived solely from City sales tax revenues attributable to sales of food for domestic home consumption as defined in Section 39-26-102(4.5), C.R.S., collected in accordance with Section 3-28-40 of this Article, and credited to the City's General Fund in accordance with Subsection (c)(4) above. Food tax revenue thus collected and credited to the General Fund shall then become eligible for redistribution to the City of Brighton Food Tax Rebate Account in accordance with this Section.

(1) Once collected and credited to the General Fund, food tax revenue may thereafter be returned to the eligible tax-paying residents of the City in the form of a rebate, as provided herein.

a. The total amount of such rebate in any given year shall not exceed the total amount of food tax revenue actually collected for the previous year.

b. In no event shall this Section be construed to create a mandatory or binding obligation of the City to rebate food tax revenue in any given year, or in years when the City Council determines that insufficient revenues are available for a rebate, and in no event shall any actionable claim or right of action against the City arise from or in connection with the provisions of this Section.

(2)a. Beginning in fiscal year 2001, and continuing each fiscal year thereafter, all or a portion of the food tax revenue collected in the previous year may be redistributed from the General Fund and credited to the City of Brighton Food Tax Rebate Account. Thereafter, in the sole discretion of the City Council, all or a portion of such food tax revenue may be returned to the eligible tax-paying residents of the City in the form of a food tax rebate, payable during the last quarter of the year following the year in which such food tax revenues are collected and credited to the food tax rebate account; provided that, in any given year, sufficient food tax revenue has first been properly collected and credited to the food tax rebate account and is, therefore, available for rebate at the discretion of the City Council.

b. Upon a determination by the City Council that sufficient food tax revenue is available for rebate in a given year, the City Council shall establish the amount of said rebate for that year by resolution. In determining the amount of the food tax rebate, if any, the City Council may take into consideration the amount of the food tax revenue for the subject year and all previous years, other uses for the sales tax revenues credited to the General Fund under Subsection (c)(4) above, the Consumer Price Index (CPI) for the subject year, and any other information, studies or data deemed important and pertinent to the City Council in its deliberations.

(3) If, in any given year, it is determined by the City Council that insufficient food tax revenue exists after the City's revenue calculations are conducted pursuant to Article X, Section 20 of the Colorado Constitution, then no rebate shall be payable for that year. In those years when there is sufficient food tax revenue and a rebate is paid, the amount of such rebate shall be credited toward the City's revenue calculations under Article X, Section 20 of the Colorado Constitution, and shall accrue to the benefit of the City in consideration thereof.

(4) If the City sales tax on food for home consumption is repealed, the rebate provisions of this Section shall terminate. Otherwise, this Section may be repealed by the City Council during its operative term for good cause reasonably related to the health, safety, welfare and continued prosperity of the citizens of the City.

In implementing the provisions of this Section and in determining the eligibility of persons who may lawfully receive a rebate hereunder, the City Council shall by separate resolution adopt appropriate policies and procedures to set forth the criteria to be used by the City Council to determine whether sufficient food tax revenue exists for a rebate and to ensure that the rebates, if any, are properly, fairly and equitably distributed between and among eligible tax-paying residents of the City. At a minimum, persons eligible to receive a rebate under this Section must be tax-paying residents of the City who actually reside within the corporate boundaries of the City during the twelve-month period prior to the year in which a rebate is paid. (Ord. 907 §6, 1976; Ord. 914 §2, 1976; Ord. 1379 §3, 1991; Ord. 1594 §1, 1999; Ord. 1717 §1, 2001; Ord. 1764 §1, 2002)

Sec. 3-28-20. Definitions and notice.

For the purposes of this Article, the definitions of words contained in this Article shall be as defined in this Section, except where the context clearly indicates a different meaning:

(1) Sales and use taxes defined; distinctions.

a. Sales tax defined. The City sales tax is levied on all sales, leases and rentals at retail on the basis of the purchase or sale price on purchases of tangible personal property and specific services taxable under this Article. All sales and purchases of tangible personal property are subject to the tax, except as specifically exempted. Sales and purchases of services, as specifically set forth in Section 3-28-75 hereof, are subject to the tax. The tax is in reality imposed on the purchaser. The duty is imposed on the seller to collect and remit the tax to the City under the penalties for failure to do so as prescribed in this Article.

b. Use tax defined. The City use tax is levied upon the privilege of using, storing, distributing or otherwise consuming tangible personal property and taxable services in the City, which property or service is purchased, leased or rented at retail and not subject to the City sales tax, without regard to whether the property or service is purchased either from sources within or without the City.

c. Distinction between sales and use taxes.

1. Sales and use taxes are complements to each other and together provide for a uniform tax at the rate imposed by Section 3-28-40 below upon either the sale, purchase, lease or rental, use, storage, distribution or consumption of all tangible personal property and upon taxable services which are purchased, leased or rented at retail, as defined in this Section.

2. Sales taxes are required to be imposed and collected from the taxpayer (purchaser or consumer) on behalf of the City by any person engaged in business in the City and making a taxable retail sale or completing any other taxable transaction within the City. Such sales taxes must be reported and remitted by the seller on a regular basis to the City.

3. If for any reason a person does not collect City tax on a taxable transaction made within the City, the sales tax that would otherwise have been collected and remitted to the City by such person (the vendor), must be reported and paid as a use tax directly to the City by the purchaser or consumer.

4. City sales tax should not be paid to persons not licensed by the City.

(2) Other definitions. The following words, terms and phrases, when used in this Article, shall have the meanings ascribed to them in this Subsection, except where the context clearly indicates a different meaning:

a. *Access services* means the services furnished by a local exchange company to its customers who provide telecommunications services which allow them to provide such telecommunications services.

b. *Adjusted gross sales and services* means gross sales and services with the addition of:

1. The cost of goods purchased tax free by the taxpayer and taken from the taxpayer's stock and used or consumed by the taxpayer personally or used by the taxpayer in the rendering of a service.

2. Monies resulting from collection, during the current taxable period, of bad debts that had, during a previous taxable period, been deducted from adjusted gross sales and services.

c. *Auction* means any sale where tangible personal property is sold by an auctioneer who is either the agent for the owner of such property or is in fact the owner thereof.

d. *Automotive vehicle* means any vehicle or device in, upon or by which a person or property is or may be transported or drawn upon a public highway, or any device used or designed for aviation or flight in the air. *Automotive vehicles* include but are not limited to motor vehicles, trailers, semi-trailers or mobile homes. Automotive vehicles shall not include devices moved by human power or used exclusively upon stationary rails or tracks.

e. *Business* means all activities engaged in or caused to be engaged in with the object of gain, benefit or advantage, direct or indirect.

f. *Capital expenditure* means an expenditure made by the business or taxpayer for the purpose of providing a permanent addition or improvement to property of the business made with the expectation of existence for a definite period. The term, furthermore, includes those expenditures for that category of items which, when privately owned, are treated as depreciable by the United States Internal Revenue Service for income tax purposes, including but not limited to the purchase of major equipment and motor vehicles.

g. *Charitable organization* means any entity which:

1. Has been certified as a not-for-profit organization under Section 501(c)(3) of the Internal Revenue Code; and
2. Is a religious or charitable organization.

As used in this definition, a *charitable organization* is an organization which, exclusively and in a manner consistent with existing laws and for the benefit of an indefinite number of persons, freely and voluntarily ministers to the physical, mental or spiritual needs of persons and which thereby lessens the burdens of government.

h. *Code* means the sales and use tax code of the City established in this Article or any of the adopted codes of the City, as the context indicates.

i. *Computer software* means the internalized instruction code which controls the basic operations (i.e., arithmetic and logic) of the computer causing it to execute instructions contained in system programs, as an integral part of the computer. It is not normally accessible or modifiable by the user. Such internal code systems are considered part of the hardware and are taxable. *Computer software* includes programs in which instructions and routines are determined necessary to program the customer's data processing equipment to enable the customer to accomplish specific functions with the computer system. The software programs may be in the form of:

1. Systems programs which control the hardware itself and allow it to compile, assemble and process application programs.
2. Application programs which are created to perform business functions, or controls, or monitor processes.
3. Prewritten programs (canned) which can be either systems programs or application programs and are not written specifically for the user.
4. Custom programs which are created specifically for the user.
5. License contracts or agreements which allow the purchaser or lessee to access specific programs.

j. *Construction equipment* means any equipment, including mobile machinery and mobile equipment, which is used to erect, install, alter, repair, remodel or otherwise make improvements to any building or structure upon real estate.

k. *Construction materials* means tangible personal property which, when combined with other tangible personal property, loses its identity to become an integral and inseparable part of a completed structure or project, including public and private improvements. *Construction materials* include but are not limited to such things as asphalt, bricks, builders' hardware, caulking material, cement, concrete, conduit, electric wiring and connections, fireplace inserts, electrical heating and cooling equipment, flooring, glass, gravel, insulation, lath, lead, lime, lumber, macadam, millwork, mortar, oil, paint, piping, pipe valves and pipe fittings, plaster, plumbing fixtures, putty, reinforcing mesh, road base, roofing, sand, sanitary sewer pipe, sheet metal, site lighting, steel, stone, stucco, tile, trees, shrubs and other landscaping materials, wall board, wall coping, wallpaper, weather stripping, wire netting and screen, water mains and meters and wood preserver. The materials listed in this definition, when used for forms, or

other items which do not remain as an integral or inseparable part of a completed structure or project, are not construction materials.

l. *Consumer* means:

1. Any individual person; or

2. A person engaged in business in the City who uses, stores, distributes or otherwise consumes in the City tangible personal property or taxable services purchased from sources inside or outside the City.

m. *Consumption* means the act or process of consuming; it includes waste, destruction or use. *Consumption* is the normal use of property for the purpose for which it was intended.

n. *Department of Finance* or *Department* means the City of Brighton Department of Finance of which the Sales Tax Division is a part.

o. *Distribution* means the act of distributing any article of tangible personal property purchased at retail for use or consumption, which may include but not be limited to the distribution of advertising gifts, shoppers' guides, catalogues, directories or other property given as prizes, premiums or for goodwill or in conjunction with the sales of other commodities or services.

p. *Drugs dispensed in accordance with a prescription* means drugs dispensed in accordance with any order in writing, dated and signed by a licensed practitioner of the healing arts or given orally by a practitioner, and immediately reduced to writing by the pharmacist, assistant pharmacist or pharmacy intern, specifying the name and address of the person for whom the medicine, drug or poison is offered and directions, if any, to be placed on the label.

q. *Engaged in business in the City* means performing or providing services or selling, leasing, renting, delivering or installing tangible personal property for storage, use or consumption within the City. *Engaged in business in the City* includes, but is not limited to, any one (1) of the following activities by which a person:

1. Directly, indirectly or by a subsidiary maintains a building, store, office, salesroom, warehouse or other place of business within the taxing jurisdiction;

2. Sends one (1) or more employees, agents or commissioned salespersons into the taxing jurisdiction to solicit business or to install, assemble, repair, service or assist in the use of products or for demonstration or other reasons;

3. Maintains one (1) or more employees, agents or commissioned salespersons on duty at a location within the taxing jurisdiction;

4. Owns, leases, rents or otherwise exercises control over real or personal property within the taxing jurisdiction; or

5. Makes more than one (1) delivery into the taxing jurisdiction within a twelve-month period.

r. *Excess tax* means that amount of City tax collected during a reporting period that is in excess of the amount yielded by applying the rate imposed by Section 3-28-40 hereof to City net taxable sales and services and which excessive collection must be remitted to the City using the method prescribed in this Article.

s. *Exempt commercial packaging materials* means containers, labels and shipping cases used by a person engaged in manufacturing, compounding, wholesaling, jobbing, retailing, packaging, distributing or bottling for sale, profit or use that meets all of the following conditions in which containers, labels and shipping cases are:

1. Used by the manufacturer, compounder, wholesaler, jobber, retailer, packager, distributor or bottler to contain or label the finished product;
2. Transferred by such person along with and as a part of the finished product to the purchaser; and
3. Not returnable to such person for reuse.

t. *Exemptions* means those deductions from adjusted gross sales and services in order to arrive at a taxable base, which *exemptions* may include exempt transactions, in whole or in part, sale or purchase of exempt commodities, articles or services for sale to exempt persons, who may either be exempt on their direct purchase or exempt on the type of commodity, articles or services purchased, all as set forth in Section 3-28-80 hereof.

u. *Farm closeout sale* means full and final disposition of all tangible personal property previously used by a farmer or rancher in farming or ranching operations which are being abandoned.

v. *Farm equipment* means farm tractors, implements of husbandry and irrigation equipment, and all shipping pallets, crates and aids used in the transfer or shipping of agricultural products for use primarily and directly in any farm operation.

w. *Farm operation* means the production of agricultural, viticultural, fruit and vegetable products, livestock, milk, honey, poultry and eggs, for profit, including but not limited to a business that hires out to produce or harvest such products.

x. *Food* means food for domestic home consumption as defined in Section 39-26-102(4.5), C.R.S., for purposes of the federal food stamp program as defined in 7 USC 2012(h), as amended, except that *food* does not include water or carbonated water marketed in containers; chewing gum; seeds and plants to grow food; prepared salads and salad bars; cold sandwiches; deli trays; and food or drink vended by or through machines or noncoin-operated or coin-collecting food and snack devices on behalf of a vendor.

y. *Freight, delivery* means the cost of transporting tangible personal property and/or taxable services to a purchaser to effect a sale, whether at retail or wholesale, by means of common, contract or commercial carrier, company vehicle or any type of mail or courier service.

z. *Gross sales* means the total amount received in money, credit, property or other consideration valued in money for all sales, leases or rentals of tangible personal property or services.

aa. *Internet* means the international computer network consisting of federal and nonfederal, interoperable, packet-controlled, switched data networks.

ab. *Internet access services* means services that provide or enable computer access by multiple users to the Internet, but shall not include that portion of packaged or bundled services providing phone or television cable services when the package or bundle includes the sale of Internet access services.

ac. *License* means a City sales tax license.

ad. *Linen services* means services involving provision and cleaning of linens, including but not limited to rags, uniforms, coveralls and diapers.

ae. *Lodging services* means the furnishing of rooms or accommodations by any person, partnership, association, corporation, estate, representative capacity or any other combination of individuals by whatever name known to a person who for consideration uses, possesses or has the right to use or possess any room in a hotel, inn, bed and breakfast residence, apartment hotel, lodging house, motor hotel, guesthouse, guest ranch, trailer coach, mobile home, auto camp or trailer court and park, or similar establishment, for a period of less than thirty (30) days under any concession, permit, right of access, license to use or other agreement, or otherwise.

af. *Machinery and manufacturing*:

1. *Machinery* means any apparatus consisting of interrelated parts used to produce an article of tangible personal property. The term includes both the basic unit and any adjunct or attachment necessary for the basic unit to accomplish its intended function.

2. *Manufacturing* means the operation of producing a new product, article, substance or commodity different from and having a distinctive name, character or use from raw or prepared materials.

ag. *Medical supplies* means drugs, prosthetic medical and dental appliances, and special beds for patients with neuromuscular or similar debilitating ailments, when sold for the direct, personal use of a specific individual in accordance with a prescription or other written directive issued by a licensed practitioner of medicine, dentistry or podiatry; corrective eyeglass lenses, including eyeglass frames, and corrective contact lenses, when sold for the direct, personal use of a specific individual in accordance with a prescription or other written directive issued by a licensed practitioner of medicine or optometry; wheelchairs and crutches, when sold for the direct, personal use of a specific individual; oxygen and hemodialysis products for use by a medical patient; hearing aids; hearing aid batteries; insulin, insulin measuring and injecting devices, glucose to be used for treatment of insulin reactions; and human whole blood, plasma, blood products and derivatives. This exemption excludes items purchased for use by medical and dental practitioners or medical facilities in providing their services, even though certain of those items may be packaged for single use by individual patients after which the item would be discarded.

ah. *Mobile machinery and self-propelled construction equipment* means those vehicles, self-propelled or otherwise, which are not designed primarily for the transportation of persons or cargo over the public highways, and those motor vehicles which may have originally been designed for the transportation of persons or cargo over the public highways, and those motor

vehicles which may have originally been designed for the transportation of persons or cargo but which have been redesigned or modified by the mounting thereon of special equipment or machinery, and which may be only incidentally operated or moved over the public highways. This definition includes but is not limited to wheeled vehicles commonly used in the construction, maintenance and repair of roadways, the drilling of wells and the digging of ditches.

ai. *Net taxable sales and services* means adjusted gross sales and services, less exemptions therefrom.

aj. *Newspaper* means a publication, printed on newsprint, intended for general circulation, and published regularly at short intervals, containing information and editorials on current events and news of general interest. The term *newspaper* does not include magazines, trade publications or journals, credit bulletins, advertising inserts, circulars, directories, maps, racing programs, reprints, newspaper clipping and mailing services or listings, publications that include an updating or revision service, or books or pocket editions of books.

ak. *Pay television* includes but is not limited to cable, microwave or other television service for which a charge is imposed.

al. *Prefabricated goods and materials* means any tangible personal property which has been fabricated, constructed or made into a form by a contractor, subcontractor, manufacturer or jobber which is ready for installation or use for its intended purpose, and which is brought to its installation site or delivered to the purchaser. The term includes tangible personal property purchased for use in other manufacturing or construction processes by the purchaser, such as construction materials purchased by a contractor in completing a contract.

am. *Preprinted newspaper supplements* means inserts, attachments or supplements circulated in newspapers that:

1. Are primarily devoted to advertising; and
2. The distribution, insertion, or attachment of which is commonly paid for by the advertiser.

an. *Prescription drugs for animals* means drugs dispensed in accordance with any order in writing, dated and signed by a practitioner, or given orally by a practitioner, specifying the animal for which the medicine or drug is offered and directions, if any, to be placed on the label.

ao. *Price or purchase price* means:

1. The price to the consumer, exclusive of any direct tax imposed by the federal government or by this Article and, in the case of all retail sales involving the exchange of property, also exclusive of the fair market value of the property exchanged at the same time and place of the exchange, if:

- a) Such exchanged property is to be sold thereafter in the usual course of the retailer's business; or

b) Such exchanged property is a vehicle and is exchanged for another vehicle and both vehicles are subject to licensing, registration or certification under the laws of this State, including but not limited to vehicles operating upon public highways, off-highway recreation vehicles, watercraft and aircraft. Any money or other consideration paid over and above the value of the exchanged property is subject to tax.

2. *Price or purchase price* includes:

- a) The amount of money received or due in cash and credits.
- b) Property at fair market value taken in exchange but not for resale in the usual course of the retailer's business.
- c) Any consideration valued in money, such as trading stamps or coupons, whereby the manufacturer or someone else reimburses the retailer for part of the purchase price and other media of exchange.
- d) The total price charged on credit sales including finance charges which are not separately stated. An amount charged as interest on the unpaid balance of the purchase price is not part of the purchase price unless the amount added to the purchase price is included in the principal amount of a promissory note, except the interest or carrying charge set out separately from the unpaid balance of the purchase price on the face of the note is not part of the purchase price. An amount charged for insurance on the property sold and separately stated is not part of the purchase price.
- e) Installation, delivery and wheeling-in charges included in the purchase price and not separately stated.
- f) Transportation and other charges to effect delivery of tangible personal property to the purchaser.
- g) Indirect federal manufacturers' excise taxes, such as taxes on automobiles, tires and floor stock.
- h) The gross purchase price of articles sold after manufacturing or after having been made to order, including the gross value of all the materials used, labor and service performed and the profit thereon.

3. *Price or purchase price* does not include:

- a) Any sales or use tax imposed by the State or by any political subdivision thereof.
- b) The fair market value of property exchanged if such property is to be sold thereafter in the retailer's usual course of business. This is not limited to exchanges in the State. Out-of-state trade-ins are an allowable adjustment to the purchase price.
- c) Discounts from the original price if such discount and the corresponding decrease in sales tax due is actually passed on to the purchaser. An anticipated discount to be allowed for payment on or before a given date is not an allowable adjustment to the price in reporting gross sales.

ap. *Private communications services* means telecommunications services furnished to a subscriber, which entitle the subscriber to exclusive or priority use of any communication channel or groups of channels, or to the exclusive or priority use of any interstate intercommunications system for the subscriber's stations.

aq. *Prosthetic device* means any artificial limb, part, device or appliance for human use which aids or replaces a bodily function; is designed, manufactured, altered or adjusted to fit a particular individual; and is prescribed by a licensed practitioner of the healing arts. Prosthetic devices include but are not limited to prescribed auditory, ophthalmic or ocular, cardiac, dental, therapeutic or orthopedic devices or appliances, oxygen concentrators and oxygen with related accessories.

ar. *Purchase, sale* means:

1. The acquisition for any consideration by any person of tangible personal property or taxable services that are purchased, leased, rented, sold, used, stored, distributed, or consumed, but excludes a bona fide gift of property or services. These terms include capital leases, installment and credit sales and property and services acquired by:

a) Transfer, either conditionally or absolutely, of title or possession or both to tangible personal property;

b) A lease, lease-purchase agreement, rental or grant of a license, including royalty agreements, to use tangible personal property or taxable services; the utilization of coin-operated devices, except coin-operated telephones, which do not vend articles of tangible personal property shall be considered short-term rentals of tangible personal property;

c) Performance of taxable services; or

d) Barter or exchange for other property or services including coupons.

2. *Purchase, sale* does not include:

a) A division of partnership assets among the partners according to their interests in the partnership.

b) The formation of a corporation by the owners of a business and the transfer of their business assets to the corporation in exchange for all the corporation's outstanding stock, except qualifying shares, in proportion to the assets contributed.

c) The transfer of assets of shareholders in the formation or dissolution of professional corporations.

d) The dissolution and the pro rata distribution of the corporation's assets to its stockholders.

e) A transfer of a partnership interest.

f) The transfer in a reorganization qualifying under Section 368(a)(1) of the Internal Revenue Code of 1954, as amended.

g) The formation of a partnership by the transfer of assets to the partnership or transfers to a partnership in exchange for proportionate interests in the partnership.

h) The repossession of personal property by a chattel mortgage holder or foreclosure by a lienholder.

as. *Purchaser*. See *Consumer*.

at. *Recreation services* means all services relating to athletic or entertainment participation events, including but not limited to pool, golf, billiards, skating, tennis, bowling, health/athletic club memberships, coin-operated amusement devices, video games and video club memberships.

au. *Rental* means the short-term use of tangible personal property for consideration.

av. *Resident* means a person who resides or maintains such person's domicile within the City or who maintains one (1) or more places of business within the City at the time of a taxable transaction as defined in this Article. A person may have dual residency or other place of residence or domicile or place of business outside the City prior to, during or after the occurrence of the taxable transaction and be a resident according to the terms of this definition.

aw. *Retail sales* means all sales except wholesale sales.

ax. *Retailer* means any person selling, leasing or renting tangible personal property or services at retail. A *retailer* shall include any:

1. Auctioneer.

2. Salesperson, representative, peddler or canvasser, who makes sales as a direct or indirect agent of or obtains such property or services sold from a dealer, distributor, supervisor or employer.

3. Charitable organization or governmental entity which makes sales of tangible personal property to the public, notwithstanding the fact that the merchandise sold may have been acquired by gift or donation or that the proceeds are to be used for charitable or governmental purposes.

ay. *Return* means the sales tax reporting form used to report sales tax collected (or exempted) to the City.

az. *Sales Tax*. [See Paragraph (1)a above].

ba. *Security system services* means electronic security system services. Such term does not include nonelectronic security services such as consulting or human or guard dog patrol services.

bb. *Sound system services* means sound system services involving provision of broadcast or prerecorded audio programming to a building or portion thereof. Such term does not include installation of sound systems where the entire system becomes the property of the building owner or the sound system service is for presentation of live performances.

bc. *Special accounting basis or estimated percentage basis* means the permission to pay or make deposit of City sales or use tax liability on a percentage of gross sales or gross purchases, and which is granted to facilitate tax reporting for construction contractors and for qualified consumers or vendors who may petition to the Finance Director on the basis prescribed in Section 3-28-85 and elsewhere in this Article.

bd. *Storage* means any keeping or retention of or exercise or dominion or control over or possession for any length of time of tangible personal property when leased, rented or purchased at retail from sources either within or without the City from any person or vendor.

be. *Tangible personal property* means all goods, merchandise, products, commodities or corporeal things and substances, solid, liquid or gaseous, which are dealt in and capable of being possessed, measured, weighted, contained, transported or exchanged, and the services or labor ordinary or necessary or actually utilized to sell, rent, lease or convey that property to the customer in a usable form or manner and which are specified as taxable herein.

bf. *Tax* means the use tax due from a consumer or the sales tax due from a retailer or the sum of both due from a retailer who also consumes.

bg. *Tax deficiency* means any amount of tax that is not reported or not paid on or before the due date.

bh. *Taxable sales* means gross sales less any exemptions and deductions specified in this Article.

bi. *Taxable services* means services subject to tax pursuant to this Article.

bj. *Taxpayer* means any person obligated to collect and/or pay tax under the terms of this Article.

bk. *Telecommunications service* means the transmission of any two-way interactive electromagnetic communications, including but not limited to voice, image, data and any other information, by the use of any means, but not limited to wire, cable, fiber optical cable, microwave, radio wave or any combinations of such media. *Telecommunications service* includes but is not limited to basic local exchange telephone service, toll telephone service and teletypewriter service, including but not limited to residential and business service, directory assistance, cellular mobile telephone or telecommunication service, specialized mobile radio and two-way pagers and paging service, including any form of mobile two-way communication. *Telecommunications service* does not include separately stated nontransmission services which constitute computer processing applications used to act on the information to be transmitted.

bl. *Therapeutic device* means devices, appliances or related accessories that are sold to correct or treat a human physical disability or surgically created abnormality; if such device, appliance or related accessory has a retail value of more than one hundred dollars (\$100.00), it must be sold in accordance with a written recommendation from a licensed doctor to qualify as a therapeutic device for purposes of this Article.

bm. *Total tax liability* means the total of all tax, penalties and/or interest owed by a taxpayer and includes sales tax collected in excess of such tax computed on total sales.

bn. *Use* means the exercise, for any length of time, by any person within the City of any right, power or dominion over tangible personal property when rented, leased or purchased at retail from sources either within or without the City, from any person or vendor. *Use* includes the withdrawal of items from inventory for consumption, distribution, destruction or waste by the person making the withdrawal.

bo. *Use tax*. [See paragraph (1)b above].

bp. *Vendor*. See *Retailer*.

bq. *Vendor's fee or retainage* means the percent of total City sales and use tax collected which is authorized to be retained by the licensed vendor to recompense the vendor for the vendor's expense of collecting and remitting the City sales tax on the vendor's sales to the various purchasers or consumers.

br. *Wats/800 service* means any outbound or inbound interstate wide area telecommunications service or other similar service which entitles the subscriber, upon payment of a periodic charge, based upon a flat amount and/or usage, to make or receive a large volume of telephonic communications to or from persons having telephone or radio telephone stations in specified areas which are outside the telephone system area in which the subscriber's station is located.

bs. *Wholesale sales* means sales to licensed retailers, jobbers, dealers or wholesalers for resale. Sales by wholesalers to consumers are not *wholesale sales*. Sales by wholesalers to nonlicensed retailers are not *wholesale sales*.

bt. *Wholesaler* means any person selling to retailers, jobbers, dealers or other wholesalers, for resale, and not for storage, use, consumption or distribution.

(3) Notice. All notices required to be issued under the provisions of this Article shall be in writing and given personally or by mail. If given by mail, the notice shall be sufficient for the purpose of this Article, unless the context indicates otherwise, if mailed postpaid by first class mail to the taxpayer's last known address as shown on the City's tax records or the property tax records of any county wherein the taxpayer owns property taxable under the general property tax laws of the State. (Ord. 635 §2, 1970; Ord. 1589, 1999; Ord. 1764 §1, 2002)

Sec. 3-28-30. Applicability.

This amended Article shall take effect January 1, 2003, and shall apply to all retail sales, unless exempt, made on or after that date. (Ord. 635 §8, 1970; Ord. 1764 §1, 2002)

Sec. 3-28-40. Imposition of tax.

There is imposed on all sales of tangible personal property at retail or the furnishing of services a tax equal to three and three-fourths percent (3¾%) of the gross receipts. The tangible personal property and services taxable are as stated in Section 3-28-75 hereof. (Ord. 635 §5(5-1)(part), 1970; Ord. 907 §1(part), 1976; Ord. 914 §1(part), 1976; Ord. 1379 §1, 1991; Ord. 1764 §1, 2002)

Sec. 3-28-50. Schedule.

The exact tax brackets for the sales tax imposed by Section 3-28-40 shall be identical and correspond with the sales tax brackets formulated by the Colorado Department of Revenue. (Ord. 952 §1, 1977; Ord. 1764 §1, 2002)

Sec. 3-28-60. Excess collected; remittance with amount due.

If any vendor, during any reporting period, shall collect a tax in excess of the tax imposed by this Article, he or she shall remit to the City the full amount of the tax imposed by this Article and also such excess. (Ord. 635 §5(5-1)(part), 1970; Ord. 907 §1(part), 1976; Ord. 914 §1(part), 1976; Ord. 1379 §2, 1991; Ord. 1764 §1, 2002)

Sec. 3-28-70. Vendor to withhold vendor's fee or retainage.

The vendor (retailer) shall be entitled as collecting agent of the City to withhold a vendor's fee, in the amount of three and one-third percent (3⅓%) of the total City sales tax collected by the vendor, up to a cap of six hundred dollars (\$600.00) from the total amount due by the vendor to the City each month if the taxes due are remitted by the vendor and postmarked by the due date. (Ord. 641 §3, 1970; Ord. 1764 §1, 2002)

Sec. 3-28-75. Taxable transactions, commodities and services.

(a) It shall be a violation of this Article for any seller to fail to collect or any purchaser to fail to pay a tax levied by this Article on sales on which exemption is disputed. Should a dispute arise between the purchaser and seller as to whether or not any such sale is exempt from taxation under this Article, nevertheless, the seller shall collect and the purchaser shall pay such tax; the purchaser thereafter may apply to the City Finance Director for a refund of such taxes paid as provided in this Article. There is levied and there shall be collected and paid a tax as stated in Section 3-28-40 hereof by every person exercising the taxable privilege defined in Section 3-28-10 as follows, including but not limited to:

(1) Automotive vehicles. On the price paid or charged on the sale, lease-purchase or rental for use or storage of an automotive vehicle to a resident of this City and subject to the applicable responsibilities provided in Sections 3-32-80 through 3-32-140 hereof.

(2) Bad debts collection. On the amount of collection, during the current taxable period, of bad debts that had, during a previous taxable period, been deducted.

(3) Combined personal property rentals with operator service. On the price paid or charged for the right of possession or use of tangible personal property granted under lease, hire or rental contract with an operator, regardless that at all times such rental property remains in the possession of the operator providing the rental service. If the charge for an operator of the property is not separately stated on the rental invoice, the total invoice amount is taxable. If the operator charge is separately stated, only the property rental charge is subject to City tax.

(4) Computer software. On the price paid or charged for computer software. Prewritten (canned) software programs are taxable. If there are significant modifications to prewritten software to customize it to a specific user, charges for labor which are included in the modification are not taxable, but only if such charges are separately stated. Custom software programs written

specifically for the user and billed on an hourly labor basis are not taxable. Subsequent sales of customized software will be treated as prewritten (canned) software and taxed accordingly.

(5) Construction materials. On the purchase price paid or charged on the sale of all such materials in accordance with Sections 3-32-50 through 3-32-70 hereof.

(6) Food. For domestic home consumption as defined in 7 U.S.C. Sec. 2012 (g), as amended, for purposes of the federal food stamp program as defined in 7 U.S.C. Sec. 2012 (h), as amended; upon the amount paid for food or drink served or furnished in or by restaurants, cafes, lunch counters, cafeterias, hotels, drugstores, social clubs, nightclubs, cabarets, resorts, snack bars, caterers, carryout shops, and other like places of business at which prepared food or drink is regularly sold, including sales from pushcarts, motor vehicles and other mobile facilities. Cover charges shall be included as part of the amount paid for such food or drink. However, meals provided to employees of the places mentioned in this paragraph at no charge or at a reduced charge and which are considered as part of their salary, wages or income shall be exempt from taxation.

(7) Freight or delivery. On the price paid or charged for freight and delivery services, including:

a. Freight-in paid by a retailer to obtain tangible personal property before resale which is passed on to the purchaser in the price of the property or through a separate invoice;

b. Charges to the purchaser for delivery where the vendor transports the property being sold; and

c. Freight and delivery charges included in the price of the property being delivered; but not including any charges billed separately or included as a separate charge on the vendor's invoice for common carrier, postal or other third party delivery services.

(8) Gas, electric and heating services. On the purchase price paid or charged for steam, heat, gas and electricity furnished and sold for domestic or commercial consumption and not for taxable resale.

(9) Linen services. On the price paid or charged for such services, whether purchased, leased or rented.

(10) Lodging services. Shall be taxed on the entire amount charged to any person for rooms or accommodations as designated in Section 3-28-20 hereof.

(11) Machine and machine tools. Purchases of machinery or machine tools, or parts thereof, to be used in Colorado directly and predominantly in manufacturing tangible personal property, for sale or profit. For purposes of this Subparagraph, direct use in manufacturing is deemed to begin for items normally manufactured from inventoried raw material at the point at which raw material is moved from plant inventory on a contiguous plant site and to end at a point at which manufacturing has altered the raw material to its completed form, including packaging, if required. Machinery used during the manufacturing process to move material from one (1) direct production step to another in a continuous flow and machinery used in testing during the manufacturing process is deemed to be directly used in manufacturing.

(12) Maintenance services. On a specified portion of the purchase price paid or charged for warranty or maintenance services and contracts relating to tangible personal property or sold separately, wherein the price of parts and supplies are not separately stated from pure labor charges. The taxable portion of such services shall be a percentage of the total price charged based on the portion of tangible personal property being serviced to the total price.

(13) Meals. On the purchase price paid for or charged for all meals furnished in or from any restaurant, eating house, hotel, drugstore, supermarket, grocery, club, resort, pushcart, motor vehicle or other mobile facility, or any other place at which meals or food are regularly sold or are required by law to have foods or meals available for sale. Any mandatory service or service-related charge, whether described as such or as a tip, gratuity or otherwise, shall be included as part of the purchase price paid for such meals.

(14) Pay television services. On the purchase price paid or charged for pay television services sold, purchased, leased, rented, furnished or used.

(15) Pesticides means all sales and purchases that are registered by the commissioner of agriculture for use in the production of agricultural and livestock products pursuant to Article 9 of Title 35, C.R.S., and offered for sale by dealers licensed to sell such pesticides pursuant to Section 39-9-115, C.R.S.

(16) Prefabricated goods and materials. On the purchase price or on the complete manufactured cost, including all raw materials, labor, overhead and profit, of all such goods or materials delivered into and used in the City.

(17) Private communication services. On the price paid or charged for such services, whether purchased, leased or rented.

(18) Security system services. On the price paid or charged for security system services, including monitoring, whether purchased, leased or rented.

(19) Sound system services. On the price paid or charged for such services, whether purchased, leased or rented.

(20) Tangible personal property. On the price paid or charged upon the sale, purchase, lease, rental or grant of license to use or on the use, storage, distribution or consumption of tangible personal property purchased. All leases, rentals or sales of tangible personal property made subsequent to its initial purchase is taxable, whether or not the person leasing, renting or selling that tangible personal property paid the tax imposed by this Article on its initial purchase.

(21) Telecommunication service.

a. On the price paid for or charged to an account or telephone located in this City for all telecommunication services, including, without limitation, prices, fees or charges for the purchase, sale or use of all international, interstate, intrastate and local telecommunication services, if these telecommunication services originate from or are received on or use any telecommunication equipment or facilities in the City, without regard to where the bill is actually received.

b. To prevent double taxation, any taxpayer, upon proof that the taxpayer has paid a tax in another city on the same telecommunication services that are subject to tax under this

Subsection, shall be allowed a credit against the tax imposed in this Subsection to the extent of the amount of such tax properly due and paid in such other city.

(22) Vending devices. On the price charged by the owner/lessee of vending machine devices for articles of tangible personal property that are to be subsequently sold in those coin-operated vending machines or devices. The City sales tax can be incorporated into the selling price of the tangible personal property. The operator, owner or person selling tangible personal property by coin-operated vending machines or devices shall be liable additionally for the sales and use tax on the purchase or use of the coin-operated devices and on any subsequent lease, rental or sale thereof on the full lease, rental or sale price.

(23) Wats/800 services. On the price paid or charged for such services, whether purchased, leased or rented.

(b) The tax must be collected notwithstanding sales made outside the City. Every vendor required or permitted to collect the tax shall collect the tax imposed by the provisions of this Article notwithstanding the following, if the property purchased is intended to be brought into the City for use, storage or consumption in the City:

(1) The purchaser's order or the contract of sale is delivered, mailed or otherwise transmitted by the purchaser to the vendor at a point outside of the City as a result of solicitation by the vendor through the medium of a catalogue or other written advertisement or by any other means;

(2) The purchaser's order or contract of sale was made or closed by acceptance or approval outside of the City or before such tangible personal property enters the City;

(3) The purchaser's order or contract of sale provides that such property shall be or is in fact procured or manufactured at a point outside the City, and shipped directly to the purchaser from a point of origin;

(4) Such property is mailed to the purchaser in the City from a point outside the City or delivered to a carrier at a point outside the City, f.o.b. or otherwise, and directed to the purchaser in the City, regardless of whether the cost of transportation is paid by the vendor or by the purchaser; or

(5) Such property is delivered directly to the purchaser at a point outside the City. (Ord. 1764 §1, 2002)

Sec. 3-28-80. Exemption to sales and use tax.

This Section sets forth the only recognized allowable permissible exemptions from the City sales or use tax. The exemptions set forth in this Section shall not be expanded by implication or similarity. In all cases, the burden of proof shall be on the taxpayer to establish the applicability of an exemption. The following are exempt from imposition of the City sales tax, use tax or both, as the context sets forth. There shall be exempt from taxation the following:

(1) All sales to the United States government and to the State, its departments and institutions, and the political subdivisions thereof in their governmental capacities only.

(2) All sales made to charitable organizations, in the conduct of their regular charitable functions and activities; except that any veterans' organization that qualifies as a charitable

organization pursuant to Section 3-28-20 hereof shall be exempt from taxation under the provisions of this Section only for the purpose of sponsoring a special event, meeting or other function in the State that is not part of such organization's regular activities in the State.

(3) All sales of cigarettes.

(4) All sales which the State is prohibited from taxing under the constitution or laws of the United States or the State and all retail sales within a distance of twenty (20) miles within the boundaries of this State to persons resident, excluding corporations, of adjoining states, which adjoining states do not impose or levy a retail sales tax on such sales, if such residents of such adjoining states are in this State for the express purpose of making purchases and not as tourists.

(5)a. All sales of drugs dispensed in accordance with a prescription; all sales of insulin in all its forms dispensed pursuant to the direction of a licensed physician; all sales of glucose usable for treatment of insulin reactions; all sales of urine- and blood-testing kits and materials; all sales of insulin measuring and injecting devices, including hypodermic syringes and needles; all sales of prosthetic devices; all sales of wheelchairs and hospital beds; all sales of drugs or materials when furnished by a doctor as part of professional services provided to a patient; and all sales of corrective eyeglasses, contact lenses, or hearing aids;

b. When sold in accordance with a written recommendation from a licensed doctor, all sales of therapeutic devices, appliances or related accessories, with a retail value of more than one hundred dollars (\$100.00), which are sold to correct or treat a human physical disability or surgically created abnormality;

c. All sales of therapeutic devices, appliances or related accessories, with a retail value of one hundred dollars (\$100.00) or less, which are sold to correct or treat a human physical disability or surgically created abnormality.

(6) All sales and purchases of commodities and services to any occupant who is a permanent resident of any hotel, apartment hotel, lodging house, motor hotel, guesthouse, guest ranch, trailer coach, mobile home, auto camp or trailer court or park and who enters into or has entered into a written agreement for occupancy of a room or accommodations for a period of at least thirty (30) consecutive days during the calendar year or preceding year.

(7) All sales of gasoline which are taxed under the provisions of Article 27 of Title 39 of the Colorado Revised Statutes (C.R.S. 39-27-101 et seq.).

(8) All sales made to schools, other than schools held or conducted for private or corporate profit.

(9) Any sale of a new or used trailer, semi-trailer, truck, truck tractor or truck body manufactured within this State if such vehicle is purchased from the manufacturer for use exclusively outside this State or in interstate commerce and is delivered by the manufacturer to the purchaser within this State, if the purchaser drives or moves such vehicle to any point outside this State within thirty (30) days after the date of delivery, and if the purchaser furnishes an affidavit to the manufacturer that such vehicle will be permanently licensed and registered outside this State and will be removed from this State within thirty (30) days after the date of delivery.

(10) Any sale of a new or used trailer, semi-trailer, truck, truck tractor or truck body if such vehicle is purchased for use exclusively outside this State or in interstate commerce and is

delivered by the manufacturer or licensed Colorado dealer to the purchaser within this State, if the purchaser drives or moves such vehicle to any point outside this State within thirty (30) days after the date of delivery, and if the purchaser furnishes an affidavit to the seller that such vehicle will be permanently licensed and registered outside this State and will be removed from this State within thirty (30) days after the date of delivery.

(11) All sales of construction and building materials to a common carrier by rail operating in interstate or foreign commerce for use by such common carrier in construction and maintenance of its railroad tracks.

(12) Any right to the continuous possession or use of any article of tangible personal property under a lease or contract, if the lessor has paid a sales or use tax on such tangible personal property upon its acquisition. A lessor of tangible personal property may acquire such property free of sales or use tax if the lessor agrees to collect sales tax on all lease payments received on such property.

(13) The transfer of tangible personal property without consideration (other than the purchase, sale or promotion of the transferor's product) to an out-of-state vendee for use outside of this State in selling products normally sold at wholesale by the transferor.

(14) The sale of tangible personal property for testing, modification, inspection or similar types of activities in this State if the ultimate use of such property in manufacturing or similar types of activities occurs outside of this State and if the test, modification or inspection period does not exceed ninety (90) days.

(15) The sale of special fuel, as defined in Section 39-27-101 (6.3) C.R.S., used for the operation of farm vehicles when such vehicles are being used on farms and ranches.

(16) Any sale of any article to a retailer or vendor of food, meals or beverages, which article is to be furnished to a consumer or user for use with articles of tangible personal property purchased at retail, if a separate charge is not made for the article to the consumer or user, if such article becomes the property of the consumer or user, together with the food, meals or beverages purchased, and if a tax is paid on the retail sale as required by Section 3-28-75 hereof.

(17) Any sale of any container or bag to a retailer or vendor of food, meals or beverages, which container or bag is to be furnished to a consumer or user for the purpose of packaging or bagging articles of tangible personal property purchased at retail, if a separate charge is not made for the container or bag to the consumer or user, if such container or bag becomes the property of the consumer or user, together with the food, meals or beverages purchased, and if a tax is paid on the retail sale as required by Section 3-28-75 hereof.

(18) All retail sales involving the exchange of property as defined in Section 3-28-20 hereof, price or purchase price, and in which, because there is no additional consideration involved in the transaction, there is no purchase price.

(19) All sales of construction and building materials to contractors and subcontractors for use in the building, erection, alteration or repair of structures, highways, roads, streets and other public works owned and used by:

a. The United States government, the State, its departments and institutions, and the political subdivisions thereof in their governmental capacities only;

b. Charitable organizations in the conduct of their regular charitable functions and activities; or

c. Schools, other than schools held or conducted for private or corporate profit.

(20) All sales of aircraft used or purchased for use in interstate commerce by a commercial airline.

(21) The sale of tangible personal property that is to be permanently affixed or attached as a component part of an aircraft.

(22) The sale of tangible personal property that is to be affixed or attached as a component part of a locomotive, a freight car, railroad work equipment or other railroad rolling stock.

(23) All sales of locomotives, freight cars, railroad work equipment and other railroad rolling stock used or purchased for use in interstate commerce by a railroad company.

(24) Internet access services, as defined in Section 3-28-20 hereof.

(25) All sales and purchases of livestock; all sales and purchases of live fish for stocking purposes; and all farm close-out sales shall be exempt from taxation.

(26) All sales and purchases of feed for livestock; all sales and purchases of seeds; and all sales and purchases of orchard trees shall be exempt from taxation.

(27) All sales and purchases of straw and other bedding for use in the care of livestock or poultry shall be exempt from taxation.

(28) Forty-eight percent (48%) of the purchase price of factory-built housing, as such housing is defined in Section 24-32-703(3), C.R.S., shall be exempt from taxation under this Article; except that the entire purchase price in any subsequent sale of a manufactured home, as such vehicle is defined in Section 42-1-102(106)(b), C.R.S., after such manufactured home has been once subject to the payment of sales tax by virtue of Section 39-26-113, C.R.S., shall be exempt from taxation.

(29) All sales of food purchased with food stamps shall be exempt from taxation. For the purposes of this Subsection, *food* shall have the same meaning as provided in 7 U.S.C. Section 2012 (g), as such Section exists on October 1, 1987, or is thereafter amended.

(30) All sales of food purchased with funds provided by the special supplemental food program for women, infants and children, as provided for in 42 U.S.C. Section 1786, shall be exempt from taxation. For the purposes of this Subsection, *food* shall have the same meaning as provided in 42 U.S.C. Section 1786, as such section exists on October 1, 1987, or is thereafter amended.

(31) All sales of precious metal bullion and coins, as defined in Sections 39-26-102 (2.6) and (6.5), C.R.S., shall be exempt from taxation.

(32) All sales and purchases of tangible personal property by a manufacturer that uses such property as a component part of goods that it manufactures, including, but not limited to, high technology goods, and that donates such goods to the United States government; the State or any

department, institution or political subdivision thereof; or any organization exempt from federal income taxes pursuant to Section 501(c)(3) of the *Internal Revenue Code of 1986*, as amended, to the extent that the aggregate value of the goods included in a single donation exceeds one thousand dollars (\$1,000.00) shall be exempt from taxation.

(33) All sales of equipment, as defined in Section 12-9-102(5), C.R.S., to a bingo-raffle licensee, as defined in Section 12-9-102(1.2), C.R.S., shall be exempt from taxation.

(34) Payment of City sales tax. The use, storage, distribution or consumption in the City of tangible personal property upon the sale of which the City retail sales tax at the rate imposed by Section 3-28-40 hereof has been legally imposed, collected and remitted is exempt from the levy of the City use tax.

(35) Payment of other state municipality tax. The use, storage, distribution or consumption in the City of tangible personal property and upon the sale of which a retail sales tax at a rate equal to or greater than the rate imposed by Section 3-28-40 hereof has been legally imposed, collected and remitted to a municipal corporation organized and existing under the authority of the State Constitution is exempt from the levy of City use tax. If the rate of retail sales tax paid to such state municipal corporation is less than the rate imposed by Section 3-28-40 hereof, the net difference between the tax due under this Article and the tax computed at the rate of such other retail sales tax shall be paid to the Finance Director. This exemption shall not apply if a tax paid to another state municipal corporation was not legally due under the laws of such municipal corporation or the laws of the state municipal corporation are not compatible with those of the City as to specific taxation and exemption as applied to the transaction in question. City taxes collected on sales within the City, which are remitted to another taxing authority in error, are not legally imposed taxes. This exemption shall also be denied for subsequent transactions within the City, including but not limited to rentals and leases.

(36) Payment of other state's sales tax. The use, storage, distribution or consumption in the City of tangible personal property and upon the sale of which any other state or any other state in combination with any subdivision thereof has legally imposed and collected a retail sales tax at a rate equal to or greater than the sum of the City's sales tax and all state-collected sales taxes in effect within the City on the purchase date is exempt from the levy of the City use tax. If the rate of retail sales tax paid to such other state and/or its political subdivisions is equal to or less than the sum of all state-collected sales taxes in effect within the City on the purchase date, the full City use tax at the rate imposed by Section 3-28-40 hereof is due. If the rate of retail sales tax paid the other state and/or its political subdivision is more than the sum of all state-collected sales taxes in effect within the City on the purchase date, but less than the sum of the City's sales tax and all state-collected sales taxes in effect within the City on the purchase date, the City use tax will be due on the net difference between that tax paid in excess of the rate imposed by Section 3-28-40 hereof and the sum of the City's sales tax and all state-collected taxes in effect within the City on the purchase date. In no instance will the City tax credit or charge exceed the rate imposed by Section 3-28-40 hereof. This exemption shall not apply if a tax paid in another state and/or its subdivisions thereof was not legally due under the laws of such other state and its subdivisions or the laws of that state and/or its subdivisions are not compatible with those of the City as to specified taxation and exemption as applied to the transaction in question. This exemption shall also be denied for subsequent transactions within the City, including but not limited to rentals and leases.

(37) Purchase price including other direct taxes. The City sales and use tax shall not apply to any direct tax legally imposed by this Article or by the federal government or by the State.

(38) Purchases prior to residency in City not taxable. The use, storage, distribution or consumption of tangible personal property of a resident, if such personal property was purchased and used for a longer duration than one-third ($\frac{1}{3}$) of its depreciable life, using the straight line depreciation method, prior to the time the property was brought into the City, and if such property was used for the primary purpose for which it was acquired prior to the time it was brought into the City.

(39) Recreation services. Recreation services provided on property owned by a political subdivision of the State, including the City, shall be exempt from the City sales tax. Nothing in this Subsection shall be deemed to exempt tangible personal property or food and beverages sold at retail by such a political subdivision.

(40) Returned goods; discounts and allowances.

a. Returned goods. The amount equal to the sale price of property returned by the purchaser when the full sale price including the tax levied is refunded, either in cash or by credit.

b. Discounts and allowances. The amount of discount from the original selling price if such discount or decrease in purchase price and the corresponding decrease in sales tax due is actually passed on to the consumer. An anticipated cash discount to be allowed for payment on or before a given date is not an allowable adjustment to the selling price in determining gross taxable sales on any vendor's return prior to the date when the customer actually receives the discount. Any adjustments in sale price such as allowable discounts, rebates and credits cannot be anticipated, and the tax must be based upon the original price, unless such adjustments have actually been made prior to the filing of the return wherein such sale is reported, provided that, if the price upon which the tax was computed and paid to the City by the vendor is subsequently readjusted, prior to the payment of the tax by the purchaser, a proper credit may be taken against the tax due on the next subsequent return.

(41) Sales for taxable resale (wholesale).

a. Component parts. The purchase price paid or charged on the sale to and purchase of tangible personal property by a person engaged in manufacturing or compounding for use, profit or sale shall be deemed a wholesale sale when it meets all of the following conditions:

1. Is actually and factually transformed by the process of manufacture;
2. Becomes by the manufacturing processes a necessary and recognizable ingredient, component and constituent part of the finished product; and
3. Its physical presence in the finished product is essential to the use thereof in the hands of the ultimate consumer.

b. Exempt commercial packaging materials. The sales of exempt commercial packaging material as defined in Section 3-28-20 hereof are exempt under this Subsection.

c. Newsprint; printer's ink. The sales to and purchases of newsprint and printer's ink for use by publishers of newspapers and commercial printers shall be deemed to be wholesale sales.

d. To other licensed retailers. The sale by wholesalers or retailers to a licensed retailer, jobber, dealer or other wholesaler for purposes of taxable resale, and not for the retailer's, jobber's, dealer's or wholesaler's own consumption, use, storage or distribution, shall be deemed to be wholesale sales.

(42) Sales to and purchases by charitable and quasi-governmental organizations. The price paid or charged on direct sales to and direct purchases by charitable and quasi-governmental organizations, in the conduct of their regular charitable and quasi-governmental capacities only. There is no sales tax on articles sold to charitable and quasi-governmental organizations in the conduct of their regular charitable functions and activities.

a. Submission of information; definitions.

1. The charitable exemption provision contained in this Subsection does not grant an exempt status automatically. The Finance Department may require submittal of the following information:

a) A copy of the organization's federal exemption letter.

b) The organization's financial statement showing the source of funds and its expenditures.

c) Copies of the organization's articles of incorporation, bylaws, and other organizational documents, copies of resolutions and minutes of the organization's governing body, and such other documents as may be needed to establish the organization's religious, charitable or quasi-governmental purpose.

2. For the purposes of the City's sales and use tax, the terms *religious*, *religious purposes* and *quasi-governmental purposes* shall be defined as being charitable or for charitable use only.

3. The religious or quasi-governmental nature of all activities shall be equated, for the purposes of this Article, with the term *charitable*, according to the City's rules of administration, and only to the extent that the items purchased are put to such charitable use will the exemption apply, as defined in Subsection 3-28-20 .

b. Sales to ministers, priests, rabbis or other employees, staff members, faculty and students of religious or charitable organizations for their personal use are not exempt from the sales and use tax.

c. Sales by a nonprofit entity or organization which is not a charitable, religious or quasi-governmental organization are taxable.

d. Before the vendor may grant an exemption from the tax on the sale of any tangible personal property or taxable service, the vendor must be furnished with and must record the state exempt license number of the institution or organization seeking such a tax-free purchase. Such exempt license number is not a blanket authorization for total exemption, but only for exemption of activities specified by the City. Those purchases made by such organizations or institutions that are not specifically exempt must be reported for tax purposes.

e. Hospitals, nursing homes, etc., not meeting the charitable definition in Section 3-28-20, are subject to the sales tax on all of their purchases of tangible personal property that are not resold, or if resold, the tax is not charged.

f. Only the governmental entities specifically cited in Subsection (43) of this Section are immune from the assessment of the sales tax on their purchase of tangible personal property and services in their governmental capacities only.

g. Schools or educational institutions which levy and are supported by tax revenues are exempt from tax under the government exemption, subject to the limitations set forth in Subsection (43). Private schools, accredited by the State Department of Education, are taxable on all their purchases of tangible personal property or taxable services unless purchased and used for strictly religious or charitable purposes. All other schools not accredited by the State Department of Education are taxable on all purchases for use, regardless of the ultimate utilization of the property acquired.

h. All federal- or state-chartered banks are taxable, including national, state and industrial banks, on all of their purchases not for taxable resale and on all of their sales. The City sales taxes will be collected and remitted to this City on the amount paid by such banks on all their lease and rental payments as well as on all other purchases and uses from the effective date of this Article.

i. Notwithstanding the provisions of this Section, all lumber, fixtures and other construction materials and supplies incorporated into any building or other structure or improvement to real property which is owned and occupied by a charitable, quasi-governmental or religious organization in the conduct of its regular charitable, quasi-governmental or religious capacity is exempt.

(43) Sales to the federal government, the State and its subdivisions. The purchase price paid or charged on direct sales to and direct purchases by the United States government and to the State, its departments or institutions and the political subdivisions thereof, including the City, in their governmental functions and activities only.

(44) Trade-Ins for taxable resale. The amount equal to the fair market value of any exchanged or traded-in property which is to be resold thereafter in the usual course of the retailer's business, if included in the full price of an article sold.

(45) Transient not liable on prior purchases. The use, storage distribution or consumption, while temporarily within this City, of tangible personal property brought into the City by a nonresident thereof for the nonresident's own personal use is exempt under this Code. (Ord. 635 §4(4-2), 1970; Ord. 1589, 1999; Ord. 1764 §1, 2002)

Sec. 3-28-85. Proof of exemption; responsibilities of taxpayers; licenses.

(a) Exemption; burden of proof. The burden of proving that any vendor, retailer, consumer or purchaser is exempt from collecting or paying City tax upon any goods sold or purchased, paying the tax to the Finance Director, or from making and remitting the appropriate tax returns, shall be on the vendor, retailer, consumer or purchaser under such reasonable requirements of proof as the Finance Director may prescribe.

(b) Reports and records. The City Finance Director may require any person, by regulation or notice served on such person, to make such return, render such statement or keep and furnish such records or make such information reports as the Finance Director may deem sufficient to show whether or not such person is liable under this Article for payment or collection of the tax imposed in this Article.

(c) Vendor responsibility for collection of and remittance of tax and licensing.

(1) Collection of tax. Every retailer or vendor engaged in business or selling at retail, as such are defined in this Article, shall, irrespective of the provisions of Section 3-28-40, be liable and responsible for the payment of taxes in the amount yielded by applying the rate imposed by Section 3-28-40 hereof to all taxable sales made by such retailer or vendor of commodities or services as specified in Section 3-28-75 hereof.

(2) Remittance of tax. Every retailer or vendor engaged in business and selling at retail, as such are defined in this Article, shall file a return as prescribed in this Article with the Finance Director on or before the 20th day of the month, unless the 20th day falls on a weekend day or holiday; then the return is due on the first business day thereafter, for the preceding month or months under report and remit taxes in the amount yielded by applying the rate imposed by Section 3-28-40 hereof to such sales and also any excess tax amounts as provided in Subsection (i) of this Section, less three and one-third percent ($3\frac{1}{3}\%$) up to a maximum of six hundred dollars (\$600.00) of the amount of taxes to be paid by the retailer under this Article to cover the retailer's expense of collection and remittance of the tax. The retailer shall not be permitted to deduct any amount to cover the expense of collection and remittance of the tax with respect to any return which is not timely filed or for which the tax amount is not timely paid. The retailer shall add the tax as a separate and distinct item, and such tax shall be a debt from the consumer to the retailer and shall be recoverable at law in the same manner as other debts.

(3) Licenses for vendors. It shall be unlawful for any person to engage in the business of selling at retail or purchasing at retail, as such are defined in this Article, tangible personal property and services subject to the tax imposed by this Article without first having obtained a license therefor, which license shall be granted and issued by the City Clerk, and shall be in force and effect until December 31 of the year in which it was issued, unless sooner revoked.

(d) Exempt institutions. No exempt organization, including quasi-governmental, charitable or other types of organizations, may purchase tax free in the City or use in the City tangible personal property or taxable services tax free unless a State Sales Tax Exemption Number is presented to the vendor prior to the allowance of a purchase tax free.

(e) Contractors, owners or lessees of realty; methods of paying use tax when construction permit required. Subject to the provisions of Section 3-32-60 hereof, every contractor who shall build, construct, reconstruct, alter, expand, modify or improve any building, dwelling or other structure or improvement to real property, and who shall purchase lumber, fixtures or any other construction materials and supplies used therefor and every owner or lessee of realty located in the City upon which any improvements have been or will be made or upon which any articles of tangible personal property are or will be attached, shall pay the City use tax as follows:

(1) Payment on estimated basis. By paying a permit use tax on the estimated percentage basis based on a percentage of the total valuation of the construction contract and paid, either through the owner, lessee or the general contractor, or separately, if such contractor is a subcontractor electing to do so, at the time a building permit is issued.

(2) Taxes for construction materials and prefabricated goods and materials. Taxes for all purchases of construction materials and prefabricated goods and materials shall be satisfied in full. The owner of the property for which such materials were purchased shall be ultimately responsible for the payment of any City use taxes that are not properly paid by the contractor. Records supporting such construction use tax payments and all related construction records are subject to review by the Finance Director in accordance with Section 3-32-60 hereof. Any overpayment of an estimated construction use tax shall be subject to refund in accordance with Section 3-28-105 hereof.

(f) New business purchases; sellers and purchasers.

(1) Acquisition of business. The City tax shall be remitted on the price paid for tangible personal property which is acquired with the purchase of a business and for use in the operation of such business. The tax shall be based on the price paid for such chattels as recorded in the bill of sale or agreement and constituting a part of the total transaction at the time of the sale or transfer, provided that the valuation is as great or greater than the fair market value of such merchandise or chattels. Where the transfer of ownership is a package deal made by a lump sum transaction, the tax shall be paid on the book value set up by the purchaser for income tax depreciation purposes or fair market value if no determination has been made. When a business is taken over in return for the assumption of outstanding indebtedness owed by former owners, the tax shall be paid on the fair market value of all taxable tangible personal property acquired by the purchaser.

(2) Purchaser liable for prior owner's unpaid tax. Purchasers of a business are liable for any unpaid tax of a predecessor. Vendors or consumers having outstanding accounts on which the sales tax has not been remitted must compute and pay the tax at the time of the sale.

(3) Agent of seller and seller liable for tax. The taxpayer shall report such tax on the City sales tax return as prescribed. The seller or the seller's agent will be held liable for sales tax remittance on the sale of the business in the event that the purchaser fails to remit the tax due on the purchase.

(g) Purchasers of automotive vehicles, mobile machinery or self-propelled construction equipment. Any resident of the City who purchases any automotive vehicle, mobile machinery or self-propelled construction equipment as defined in Section 3-28-20 hereof for use within the City, and who has not paid the tax imposed by this Article to a vendor required or authorized to collect the tax shall pay the City tax due to the County Clerk at the time the automotive vehicle, mobile machinery or self-propelled construction equipment is registered.

(h) Tax on credit sales, etc. Whenever tangible personal property is sold, including that sold in conjunction with the sale of a business, which is taxable under this Article, under a conditional sales contract or purchase contract whereby the seller retains title as security for all or part of the purchase price, or whenever the seller takes a chattel mortgage on such tangible personal property to secure all or part of the purchase price, the total tax based on the total selling price shall become immediately due and payable. The tax shall be charged or collected and remitted by the vendor. No refund or credit shall be allowed to either party to the transaction in case of repossession.

(i) Excess collections; failure to remit collections. If any vendor shall during any reporting period collect any excess City tax amounts, the vendor shall remit to the City the full net amount of the tax imposed in this Article, together with such excess City tax amounts. If it is not possible to determine to whom the excess tax is due, the vendor shall remit one-half (1/2) of such excess tax to the City and one-half (1/2) of such excess tax to the State. The retention by the vendor of any excess tax

amounts or the intentional failure to remit punctually to the City the full amount required to be remitted by the provisions of this Article is a violation of this Article.

(j) Unlawful to advertise absorption of tax. It shall be unlawful for any taxpayer or vendor to advertise or hold out or state to the public or to any customer, directly or indirectly, that the tax or any part thereof imposed by this Article will be assumed or absorbed by the vendor or taxpayer or that it will not be added to the selling price of the property sold or, if added, that it or any part thereof will be refunded.

(k) Special accounting for alcoholic beverage sales by the drink, vending machine sales of tangible personal property, recreation services, sales. Any retailer selling malt, vinous or spirituous liquors by the drink may include in the sales price the tax levied under this Section, provided that no such retailer shall advertise or hold out to the public in any manner, directly or indirectly, that such tax is not included as a part of the sales price to the consumer. No such retailer shall gain any benefit from the collection or payment of such tax, except as permitted in Subsection (c)(2) above. Also, any vending device operator selling tangible personal property through vending devices, any vendor who sells recreation services may include in the sales price the tax levied under this Section, with the same provisions as provided above.

(l) Special accounting for combined sales of services and personal property. Every retailer or vendor conducting a business in which the transaction between the vendor and the consumer or purchaser consists of the supply of tangible personal property and services in connection with the maintenance or servicing of such shall be required to pay the tax levied under this Article upon the full contract price, unless application is made to the Finance Director for permission to use a percentage basis for reporting the tangible personal property sold and the labor or services supplied under such contract. The Finance Director is authorized to determine the percentage based upon the ratio of the tangible personal property included in the consideration as it bears to the total of the consideration paid under such combination contract or sale which shall be subject to the tax levied pursuant to the provisions of this Article. This Subsection shall not be construed to include terms upon which the tax is imposed on the full purchase price, as defined in Section 3-28-20 hereof, nor shall it be construed as an allowance for the vendor to fail to itemize to the customer the taxable and nontaxable portions of the bill.

(m) Special accounting for sales tax collections by nonresident vendors. Every retailer or vendor engaged in business in this City, as such is defined in Section 3-28-20 hereof, and making sales, even though not maintaining an office in this City, of tangible personal property or taxable services subject to the sales tax must, in accordance with this Article, collect and remit the sales tax on such sales in like manner as a retailer or vendor maintaining an office in this City. If the nonresident vendor petitions the Finance Director, stating that the imposition of the tax on an individual sales basis will impose an unnecessary hardship, and if the type and occasion of sale so warrants, the Finance Director may accept payment of that vendor's tax liability on a calendar year quarterly basis.

(n) Tax return contents, reporting periods, sale of business.

(1) Tax return contents, form. The returns to be filed by the taxpayer or the taxpayer's duly authorized agent shall contain such information and shall be completed in such manner and upon such forms as the Finance Director may prescribe.

(2) Reporting periods. If the accounting methods regularly employed by the vendor or licensed consumer in the transaction of business or other conditions are such that the returns made on a calendar-month basis will impose unnecessary hardship, the Finance Director may, upon

request of the vendor or licensed consumer, accept returns at such intervals as will, in the Finance Director's opinion, better suit the convenience of the taxpayer and will not jeopardize the collection of the tax. The Finance Director may, by rule, permit a vendor or licensed consumer whose monthly tax collected is less than forty dollars (\$40.00) to make returns and pay taxes on a calendar-year quarterly basis.

(3) Sale or transfer of business. Any sale, transfer or purchase of an interest in a business enterprise by any person, where the respective interest of the person purchasing or selling, as a result of the transaction, has changed in any degree, requires the issuance of a new license. In all cases where any of the assets of any new business are within the City, payment of sales tax is required on transfer of title or possession, or both, of the tangible personal property taxable in this Article, whether involving a retail establishment or any other type business enterprise. (Ord. 1764, §1, 2002)

Sec. 3-28-90. Administration.

(a) Finance Department; City Clerk; City Manager. Under this Article, responsibilities of the Finance Department, City Clerk and City Manager are as follows:

(1) The Finance Department is given responsibility for administration and implementation of this Article under the direction of the City Manager.

(2) The City Clerk is given responsibility for administration and implementation of the business licensing function of this Article.

(3) The City Manager shall adopt rules and regulations for the administration of this Code.

(b) Administration of Article. In order to effectuate the purposes of this Article, the Finance Director, under the direction of the City Manager, shall prescribe necessary forms for the making of returns, for the ascertainment, assessment and collection of the taxes imposed and for the proper administration and enforcement thereof and to permit uniform methods of adding the tax or the average equivalent thereof to the purchase price. The City Manager shall have power and authority to amend or rescind such rules and regulations adopted pursuant to Subsection (a)(3) above not inconsistent with the provisions of this Article. For the purpose of ascertaining the correctness of any return or for the purpose of making an estimate of the tax due from any taxpayer, the Finance Director shall have the power to examine or cause to be examined any books, papers, records or memoranda bearing upon the matters required to be included in the return.

(c) Books and records required of taxpayer.

(1) Taxpayer's retention of records. It shall be the duty of every person liable to the City for any tax imposed under this Article to keep and preserve for a minimum of three (3) years such books, accounts and records as may be necessary to determine the amount of such tax liability. Any person who is required to be licensed under Section 3-28-85 hereof, but who has failed to obtain such license, shall provide, upon request by the Finance Director, books and records dating back to the time such person began engaging in business in the City.

(2) Availability of records to Finance Director. All such books, accounts and records shall be open for examination at any time by the Finance Director. If such person keeps or maintains such person's books, accounts and other records or any portion thereof outside the State, upon demand by the Finance Director, such person shall make such available at a suitable place within

the State, to be designated by the Finance Director, for examination, inspection and audit by the Finance Director. The Finance Director, in the discretion of the Finance Director, may make, permit or cause to be made the examination, inspection or audit of books, accounts and other records so kept or maintained by such person outside the State at the place where such are kept or maintained or at any place outside the State where such will be made available, provided that such person shall have entered into a binding agreement with the City to reimburse the City for all costs and expenses incurred by the City in order to have such examination, inspection or audit made in such place.

(3) Subpoena to secure records. If any taxpayer shall refuse voluntarily to furnish any of the information required in Subsection (c)(1) above, when requested by the Finance Director, the Finance Director, by subpoena issued under the Finance Director's hand, may require the attendance of the taxpayer and the production by the taxpayer of any such information in the taxpayer's possession and may administer an oath to the taxpayer and take the taxpayer's testimony. If the taxpayer fails or refuses to respond to the subpoena and give testimony, the Finance Director may apply to any judge of a district court of the State for a citation against such taxpayer for contempt, and the judge may cause arrest of such person; and upon hearing, the judge shall have, for the purpose of enforcing obedience to the requirements of the subpoena, power to make such order as, in the judge's discretion, the judge deems consistent with the law for punishment of contempt.

(4) Subpoena to secure evidence. If the Finance Director is unable to secure from the taxpayer information relating to the correctness of the taxpayer's return or the amount of the income of the taxpayer, the Finance Director may apply to any judge of a district court of the State for the issuance of subpoenas to such other persons as the Finance Director believes may have knowledge in the premises, and upon making a showing satisfactory to the court that the taxpayer cannot be found or evades service of subpoena or fails or refuses to produce records or give testimony, the judge shall have power to cause the issuance of subpoenas under the seal of the court to the person sought to be so summoned requiring them or any of them to appear before the Finance Director and give testimony relating to the taxpayer's return or income. In case any of such persons so served with subpoenas shall fail to respond thereto, the judge may proceed against such persons as in cases of contempt.

(d) Preservation of tax reports and returns.

(1) City's preservation of records. All reports and returns of taxes received by the Finance Department covered by this Article shall be preserved for three (3) years and thereafter until the Finance Director orders them to be destroyed.

(2) Confidential nature of returns. Except in accordance with judicial order or as otherwise provided by law, the Finance Director shall not divulge or make known in any way any information disclosed in any document, report or return filed in connection with any of the taxes covered by this Article. The officials charged with the custody of such documents, reports and returns shall not be required to produce any of them or evidence of anything contained in them in any action or proceeding in any court, except on behalf of the Finance Director in an action or proceeding under the provisions of any such taxing statutes when the report of facts shown thereby are directly involved in such action or proceeding, in either of which events the court may require the production of and may admit in evidence so much of such reports or of the facts shown thereby as are pertinent to the action or proceeding and no more.

(3) Taxpayer records. Nothing in this Section shall be construed to prohibit the delivery to a person or a person's duly authorized representative of a copy of any return or report filed in connection with such person's tax, and such copies may be certified by the Finance Director and when so certified shall be evidence equally with and in like manner as the originals and may be received by the courts of this State as evidence of the contents.

(4) Publication of statistics; returns available to City Attorney. Nothing in this Section shall be construed to prohibit the publication of statistics so classified as to prevent the identification of particular reports or returns and the items thereof or the inspection of returns by the City Attorney or other legal representatives of the City.

(5) Records available to authorized parties. Notwithstanding the provisions of this Section, the Finance Director, in the discretion of the Finance Director, may furnish to the taxing officials of any other state and its political subdivisions and to the United States any information contained in tax returns and related schedules and documents filed pursuant to this Article or in the report of an audit or investigation made with respect thereto, provided that such jurisdiction enters into an agreement with the Finance Director to grant similar privileges to the City and, provided further, that such information is to be used only for tax purposes.

(e) Employees' restrictions. It shall be unlawful for any officer or employee of the City engaged in any administration which is governed by this Article to engage in the business or profession of tax accounting or to accept employment, with or without consideration, from any person holding a City sales tax license for the purpose, directly or indirectly, of preparing tax returns or reports required by the laws of the City, by the State, by any other state or by the United States government or to accept any employment for the purpose of advising, preparing materials or data or the auditing of books or records to be used in an effort to defeat or cancel any tax or part thereof that has been assessed by any city of the State, by the State, any other state or its political subdivisions or by the United States government.

(f) Map of municipal boundaries. The City sales tax office shall make available to any requesting vendor a map showing the corporate boundaries of the City. For transactions consummated on or after January 1, 2003, the requesting vendor may rely on such map and any update thereof available to such vendor in determining whether to collect a sales or use tax or both. No penalty shall be imposed or action for deficiency maintained against such a vendor who in good faith complies with the most recent map available.

(g) Standard reporting form. The City shall use the standard municipal sales and use tax reporting form and any subsequent revisions thereto adopted by the Executive Director of the State Department of Revenue by the first full month commencing one hundred twenty (120) days after the effective date of the regulation adopting or revising such standard form. (Ord. 1764 §1, 2002)

Sec. 3-28-95. Penalties, interest and estimated taxes.

(a) Assessment to recover unpaid penalties, interest and estimated taxes. If any person, taxpayer or vendor fails, neglects or refuses to collect the tax or to make a return and pay the tax as required by this Article or should fail to remit the proper amount of tax or underpays the tax because of negligence or fraud, penalties and interests shall be added to such tax and imposed in accordance with the following provisions. If a person required to file a return and pay the taxes imposed by this Article disregards the provisions of this Article and, in doing so, repeatedly or on a regular basis fails to file accurate tax returns or fails to remit the correct amount of taxes, the Finance Director, on such information as is available, shall make an estimate of the tax and additions of penalty and interest

thereto and shall give to the delinquent taxpayer, person or vendor written notice of final determination, assessment and demand for payment. Such notice shall be served personally or by first class mail, and the assessed amount shall be due and payable within twenty (20) days after the date of such notice. An estimate of taxes due shall also be made if an examination under Section 3-28-90 hereof shows that there are inadequate records available to make an actual determination of taxes due.

(b) Failure to file tax return; failure to pay tax; deficiency due to negligence. When penalties and/or interest are required or permitted to be charged under any provisions of this Article, penalties and interest shall be determined as follows:

(1) When a tax deficiency exists from underreporting, mathematical error or failure to pay due to negligence or a knowing, intentional disregard of the filing and payment requirements of the City, but without intent to defraud, penalty and interest shall be assessed as follows:

a. For transactions consummated on or after January 1, 2003:

1. The sales tax penalty shall be ten percent (10%) of the deficiency.

2. The annual rate of interest assessed pursuant to this Section shall be imposed and paid at the rate of one percent (1%) per month. Such interest shall accrue from the date such payment is overdue to the date paid.

(c) Mathematical error on tax returns. In the event that the amount of tax is understated on the taxpayer's return due to a mathematical error, the City shall notify the taxpayer by written notice of final determination, assessment and demand for payment of the amount of tax in excess of that shown in the return which is due and has been assessed. The taxpayer shall have no right of protest or appeal as in the matter of other assessments, but shall pay the tax due and assessed or file an amended return to show the true amount of tax due within twenty (20) days from such assessment.

(d) Deficiency due to fraud. For transactions consummated on or after January 1, 2003, if any taxpayer or vendor fails to file a return or pay the tax on any return required under this Article on the date prescribed therefor, and any part of the deficiency is due to fraud with the intent to evade the tax, there shall be added one hundred percent (100%) of the total amount of the deficiency, and in such case the whole amount of the tax unpaid, including the additions, shall become due and payable twenty (20) days after written notice of final determination, assessment and demand for payment by the Finance Director, and an additional three percent (3%) per month on such amount shall be added from the date the tax was due until paid.

(e) Special penalty. If any person, taxpayer or vendor liable for the payment of a tax imposed by this Section has repeatedly failed, neglected or refused to pay the tax within the time specified for such payment and the Finance Department has been required to exercise its enforcement proceedings three (3) or more times through the issuance of a distraint warrant to enforce collection of any such taxes due, the Finance Director is authorized to assess and collect the amount of such taxes due, together with all the interest and penalties thereon provided by law and also an additional amount equal to fifteen percent (15%) of the delinquent taxes, interest and penalties due or the sum of twenty-five dollars (\$25.00), whichever amount is greater, such additional amount being imposed to compensate the Finance Department for administrative and collection costs incurred in collecting such delinquent taxes.

(f) Waiver of penalty; credit; limitation. The Finance Director is authorized to waive, for good cause shown, any penalty assessed as in this Article provided, and interest imposed in excess of six percent (6%) per annum shall be deemed a penalty.

(1) Interest assessment. Interest prescribed under this Section shall be paid upon notice and demand and shall be assessed, collected and paid in the same manner as the tax to which it is applicable.

(2) No interest assessed on credit. If any portion of a tax is satisfied by credit of an overpayment, no interest shall be imposed under this Section on the portion of the tax so satisfied for any period during which, if the credit had not been made, interest would have been allowed with respect to such overpayment.

(3) Interest assessment period. Interest prescribed under this Section on any tax may be assessed and collected at any time during the period within which the tax to which such interest relates may be assessed and collected. (Ord. 1764 §1, 2002)

Sec. 3-28-100. Evasion of tax; violations and penalties.

(a) Evasion and avoidance of tax. It shall be a violation of this Article for any retailer, vendor, consumer, purchaser or any other person subject to the tax levied by this Article to refuse to make any return provided to be made by this Article; to make any false or fraudulent return; to make any false statements in any return; to fail or refuse to make payment to the Finance Director of any taxes collected or due the City; or in any manner to evade the collection and payment of the tax or any part thereof imposed by this Article. It shall be a violation of this Article for any person or purchaser to fail or refuse to pay such tax or evade the payment thereof or to aid or abet another in any attempt to evade the payment of the tax imposed by this Article. Any person making a false return or a return containing a false statement shall have violated this Article and shall be subject to prosecution and the imposition of penalties as provided by law. Any person in violation of this Article shall be subject to these same penalties.

(b) Fine and imprisonment. Any person who shall violate any of the provisions of this Article shall be guilty of a violation thereof and shall be punished as provided in Section 1-24-10. If any such person is an employee or officer of the City, such violation shall be grounds for dismissal from office or employment.

(c) Separate violations. Each and every twenty-four-hour continuation of any violation shall constitute a distinct and separate offense. (Ord. 1764 §1, 2002)

Sec. 3-28-105. Overpayments; erroneous refunds; refunds.

(a) Interest allowance. Interest shall not be allowed and paid upon any overpayment in respect of any sales or use tax.

(b) Refund erroneously made to bear interest. Any portion of a sales or use tax or any interest, assessable penalty, additional amount or addition to tax which has been erroneously refunded shall bear interest at the rate of twelve percent (12%) per annum from the date of the payment of the refund.

(c) Assignability. The right of any person to a refund under this Article shall not be assignable, and such application for refund must be made by the same person who purchased the goods and paid the tax thereon as shown in the invoice of the sale thereof.

(d) Burden of proof of exemption. The burden of proving that sales, services and commodities on which tax refunds are claimed are exempt from taxation under Section 3-28-80 hereof or were not at retail shall be on the one making such claim under such reasonable requirements of proof as the Finance Director may prescribe.

(e) Disputed tax. Should a dispute arise between the purchaser and seller as to whether or not any sale, service or commodity is exempted from taxation under this Article, nevertheless, the seller shall collect and the purchaser shall pay the tax, and the seller shall issue to the purchaser a receipt or certificate, on forms prescribed by the Finance Director, showing the names of the seller and the purchaser, the items purchased, the date, price, amount of tax paid and a brief statement of the claim of exemption.

(f) Allowed if exempt. A refund shall be made or a credit allowed for the tax so paid under dispute by any purchaser who qualifies for an exemption as provided in this Article. Such refund shall be made by the Finance Director after compliance with the following conditions precedent. Applications for refund must be made within sixty (60) days after the purchase of the goods whereon an exemption is claimed and must be supported by the affidavit of the purchaser accompanied by the original paid invoice or sales receipt and certificate issued by the seller and must be made upon such forms as shall be prescribed and furnished by the Finance Director, which forms shall contain such information as the Finance Director shall prescribe.

(g) Disallowed. Upon receipt of such application, the Finance Director shall examine the application with all due speed and shall give notice to the applicant, by order, in writing, of the decision thereon. Protest of a denial of refund and request for hearing as provided in Section 3-28-110 hereof shall be submitted in writing to the Finance Director within twenty (20) calendar days from the date of denial of the refund and shall identify the amount of the refund requested and the basis for the protest. The decision made based upon that hearing may be appealed to the Adams County District Court in the manner provided in this Article.

(h) Payment. If the Finance Director discovers from the examination of a return within the time periods provided for the filing of refunds or upon claim duly filed by the taxpayer or upon final judgment of a court that the tax, penalty or interest paid by any taxpayer is in excess of the amount due or has been illegally or erroneously collected, the Finance Director shall rule in favor of the taxpayer for refund of such illegally collected tax, penalty or interest, regardless of whether or not such sum was paid under protest. The Finance Director shall issue payment to the taxpayer out of the appropriate City fund provided therefor, provided that the Finance Director shall keep in the vendor's file a duplicate of the voucher and also a statement which shall set forth the reason why such refund shall have been ordered.

(i) Offset of previous tax due. Whenever it is established that any taxpayer has, for any reporting period, overpaid a tax imposed by this Article and that there is an unpaid balance of tax and interest accrued, according to the records of the Finance Director, owing by a taxpayer for any other reporting period, the overpayment of tax plus interest allowable thereon as does not exceed the amount of such unpaid balance shall be credited thereto, the remainder shall be applied against future tax liability or the overpayment shall be refunded as the Finance Director may determine.

(j) Special refund for undercollection; retailer overpayment of taxes. If any retailer can demonstrate to the reasonable satisfaction of the Finance Director that consistent, diligent application and adherence by the retailer of the bracket system rates results in actual undercollection of the sales tax by the retailer, the Finance Director is authorized to allow the retailer either a credit against future tax liability or a refund of such undercollection as the Finance Director may determine.

(k) Special refund for estimated payment basis; contractor overpayment of taxes. Application for refund by contractors prepaying on the estimated percentage payment basis under Section 3-28-85 hereof shall be made within eighteen (18) months after the date of purchase and shall be made on forms prescribed and furnished by the Finance Director, which forms shall contain, in addition to the foregoing information, such pertinent data as the Finance Director shall prescribe.

(l) Special refund to United States and the State. The foregoing notwithstanding, however, applications for refunds submitted by the United States government, the State, its departments or institutions and the political subdivisions thereof, including the City, shall be submitted within eighteen (18) months after purchase of the tangible personal property purchased by any person furnishing work and materials under contract with such governmental units on any of their properties located within the corporate limits of the City.

(m) False or fraudulent refund claim. Any applicant for refund under the provisions of this Section or any other person who shall make any false statement in connection with an application for a refund of any taxes shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punishable as provided in this Article.

(n) Action to recover fraudulent claims. If any person is convicted under the provisions of this Section, such convictions shall be prima facie evidence that all refunds received by such person during the current year were obtained unlawfully, and the Finance Director is empowered and directed to bring appropriate action for recovery of such refunds.

(o) Taxes paid in error. For transactions consummated on or after January 1, 2003, an application for refund of sales or use taxes paid in error or by mistake shall be made within three (3) years after the date of purchase, storage, use or consumption of the goods for which the refund is claimed and must be supported by documentation as prescribed by the Finance Director. (Ord. 1764 §1, 2002)

Sec. 3-28-110. Hearings; appeals.

(a) Request for hearing; protest. A taxpayer may request a hearing when the City asserts that taxes and any penalties or interest under Section 3-28-95 hereof are due, as stated in a notice of final determination, assessment and demand for payment sent to the taxpayer by the City or when the City denies a taxpayer's claim for refund. The hearing request shall be in writing and shall be received by the Finance Director within twenty (20) days of the date of mailing of a notice of final determination, assessment and demand for payment or of a notice of a denial of refund. This request for hearing shall set forth the factual and/or legal basis for the taxpayer's belief that the assessment or denial is incorrect. A taxpayer's failure to timely request a hearing shall constitute a failure to exhaust local remedies. Any unprotested tax, penalty and interest shall be paid in full within the twenty-day period specified in this Subsection.

(b) Informal conferences. Upon receipt of a request for hearing, the Department of Finance will contact the taxpayer or the taxpayer's authorized representative to schedule an informal conference to discuss the procedure to be followed in the administrative hearing, to clarify the relevant issues and

facts, and, if possible, to settle the matters in dispute. Participation in the informal conference does not waive any of the taxpayer's or the City's rights under this Section.

(c) Hearing time and place. The Finance Director shall notify the taxpayer in writing of the time and place for the administrative hearing within thirty (30) days of receipt of the taxpayer's request for a hearing. Such notification shall be mailed no less than twenty (20) days prior to the date of hearing. In all cases, the hearing shall be held in the City at the office of the Finance Director. A final decision thereon shall be issued and the results mailed to the taxpayer within ninety (90) days of the City's receipt of the taxpayer's request for hearing, except that the ninety-day period shall be extended to one hundred eighty (180) days if the taxpayer caused any delay in the holding of the hearing or in the issuance of the decision, and except that the one-hundred-eighty-day period may be waived by the taxpayer.

(d) Procedures. Hearings before the Finance Director shall be conducted in an informal manner. Formal rules of evidence shall not apply and transcripts or filing of briefs will not be required. The City will supply the taxpayer or representative a procedure booklet entitled "Rules Governing Hearings Before the Finance Director," which outlines the procedural rules to be followed at the hearing.

(e) Exhaustion of local remedies. The taxpayer's participation in a hearing requested and held pursuant to this Section shall be an exhaustion of all local remedies as defined in Section 29-2-106.1(2)(c), C.R.S.

(f) Conduct of hearing. The hearing shall be held before the Finance Director. The Finance Director is authorized to administer oaths and take testimony. At the hearing, the taxpayer may assert any facts, make any arguments and file any briefs and affidavits the taxpayer believes pertinent to the taxpayer's cause.

(g) Request for hearing; time limitation. After the expiration of twenty (20) days from the date of the notice of final determination, assessment and demand for payment or denial of refund, if the tax has not been paid or if no request for hearing has been timely filed, the notice of final determination, assessment and demand for payment previously mailed shall constitute a final assessment of the amount of the tax specified, together with interest and penalties, or shall constitute a final denial of refund, as the case may be.

(h) Adjustment of tax under question. Based on the evidence presented at any hearing or filed in support of the taxpayer's contentions at any hearing, the Finance Director may modify or abate in full any tax, penalty and interest questioned at the hearing or may approve a refund or may uphold the original assessment.

(i) Determination notices. Upon rejection, in whole or in part, of a claim for refund, or upon a finding by the Finance Director that a valid sales or use tax assessment, in whole or in part, has been made against the taxpayer, the Finance Director shall send, within ten (10) days of said finding, a final determination notice to the taxpayer setting forth the amount of the claim for refund that is denied or the amount of sales and use taxes found still due and owing, stating the grounds for such determination. Unless an appeal is taken as provided in this Section, the taxes, together with interest thereon and penalties, if any, shall be paid within thirty (30) days after the date of the final determination notice.

(j) License revocation. A hearing on the revocation of a City sales tax license shall be held upon reasonable notice to the taxpayer by the Finance Director. The hearing shall be before the

Finance Director. The final determination made by the Finance Director pursuant to the hearing shall be appealable as prescribed in this Section.

(k) Authority of taxpayer. The taxpayer may appeal a final hearing determination notice issued by the Finance Director pursuant to this Section, provided that the taxpayer files a notice of appeal within thirty (30) days of the mailing of the final hearing determination notice.

(l) Venue. Venue and jurisdiction to hear and determine appeals is conferred on the Adams County District Court.

(m) Review of proceedings. The District Court of Adams County shall have original jurisdiction to review the proceedings, such review being conducted after the final determination by the Finance Director in accordance with Rule 106(a)(4) of the Colorado Rules of Civil Procedure.

(n) Filing of bond. Within fifteen (15) days after filing of the notice of appeal, the taxpayer shall file with the District Court a bond in twice the amount of the taxes, interest and other charges stated which are contested on appeal, provided that the taxpayer may at the taxpayer's option deposit the disputed amount with the Finance Director in lieu of posting bond. If such amount is so deposited, no further interest shall accrue on the deficiency contested during the pendency of the action. At the conclusion of the action or when the time for such appeal has expired, the funds deposited shall be, at the direction of the court, either retained by the Finance Director and applied against the deficiency or returned in whole or in part to the taxpayer, with interest as prescribed in this Article at one-half percent ($\frac{1}{2}\%$) per month. No claim for refund of the amount so deposited with the Finance Director need be made by the taxpayer in order for such amounts to be repaid in accordance with the direction of the court.

(o) Cases other than license revocation. In all cases other than license revocation, the taxpayer may choose to appeal the hearing determination notice of the Finance Director pursuant to Section 29-2-106.1, C.R.S. (Ord. 1764 §1, 2002)

Sec. 3-28-115. Lien; assessments; collection.

(a) Lien. The sales tax shall be a first and prior lien on the tangible personal property sold, purchased, stored, used, distributed or consumed, subject only to valid mortgage or other liens of record on and prior to the recording of notice as required by Subsection (f) below, and when such tax is collected by retailers or agents, the sales tax imposed by sections under this Article shall be a first and prior lien upon the goods and business fixtures of or used by any retailer under lease, title retaining contract or other contract arrangement and shall take precedence on all such property over other liens or claims of whatever kind or nature.

(b) Effect of sale of business; purchases subject to lien.

(1) Sale of business. Any person who shall sell out a business or stock of goods or who shall quit business shall be required to make out the return as provided in this Article within ten (10) days after the date the person sold the business or stock of goods or quit business, and such person's successor in business shall be required to withhold sufficient of the purchase money to cover the amount of taxes due and unpaid until such time as the former owner shall produce a receipt from the Finance Director showing that the taxes have been paid or a certificate that no taxes are due.

(2) Purchases subject to lien. If the purchaser of a business or stock or goods shall fail to withhold the purchase money as provided in Subsection (b)(1) above and the taxes shall be due and unpaid after the ten-day period allowed, the purchaser, as well as the seller, shall be personally liable for the payment of the taxes unpaid by the former owner. Likewise, anyone who takes any stock of goods or business fixtures of or used by any person under lease, title retaining contract or other contract arrangement, by purchase, foreclosure sale or otherwise, takes such subject to the lien for any delinquent sales taxes owed by such person and shall be liable for the payment of all delinquent sales taxes of such prior owner, not, however, exceeding the value of the property so taken or acquired.

(c) Status of unpaid tax in bankruptcy and receivership. Whenever the business or property of any taxpayer subject to this Article shall be placed in receivership, bankruptcy or assignment for the benefit of creditors or seized under distraint for property taxes, all taxes, penalties and interest imposed by this Article and for which such retailer is in any way liable under the terms of this Article shall be a prior and preferred lien against all the property of such taxpayer, except as to preexisting claims or liens of a bona fide mortgagee, pledgee, judgment creditor or purchaser whose rights shall have attached prior to the filing of the notice as provided herein on the property of the taxpayer other than on the goods, stock-in-trade and business fixtures of such taxpayer. No sheriff, receiver, assignee or other officer shall sell the property of any person subject to this Article under process or order of any court without first ascertaining from the Finance Director the amount of any taxes due and payable under this Article, and if there are any such taxes due, owing or unpaid, it shall be the duty of such officer to first pay the amount of such taxes out of the proceeds of such sale before making payment of any monies to judgment creditor or other claims of whatever nature, except that the costs of the proceedings and other preexisting claims or liens as above provided.

(d) Construction improvements.

(1) Lien for unpaid taxes on personal property affixed to real property. The full amount of unpaid taxes arising from and required to be reported on personal property affixed to real property under this Article, together with interest and penalties as provided in this Article, shall be and constitute a first and prior lien, which lien shall have precedence over all other liens of whatever kind and nature, except as to liens for general taxes created by state law and except as to preexisting claims or liens of a bona fide mortgagee, pledgee, judgment creditor or purchaser whose rights shall have attached prior to the filing of the notice of tax lien on the property of the taxpayer other than on the goods, stock-in-trade and business fixtures of such taxpayer.

(2) Final inspection or certificate of occupancy denied unless tax paid. No final inspection shall be made by the City Building Inspector and no certificate of occupancy shall be issued unless all taxes due, as provided in this Article, on all lumber, fixtures and any other building materials and supplies used in or connected with the construction, reconstruction, alteration, expansion, modification or improvement of any building, dwelling or other structure or improvement to real property within the City have been paid or arrangements therefor made with the Finance Director.

(e) Refusal to file returns.

(1) Assessment of taxes. If any person or taxpayer or vendor fails, neglects or refuses to collect the tax or file a return and pay the tax as required by this Article or fails to remit the proper amount of tax or underpays the tax because of negligence, fraud or on a regular basis, the Finance Director shall make an estimate based upon such information as may be available and shall add in addition to the tax, penalty and interest as set forth in Section 3-28-95 hereof and promptly thereafter give to the delinquent taxpayer written notice of such estimated taxes, penalty and

interest, which notice of assessment shall be served personally or by certified or registered mail and which notice of final determination, assessment and demand for payment shall be due and payable twenty (20) days from such service.

(2) Hearing and appeal. The provisions as to hearings and appeals as set forth in Section 3-28-110 hereof shall apply to such notice of final determination, assessment and demand for payment.

(f) Notice of tax lien. If any taxes, penalty or interest imposed by this Article and shown due by returns filed by the taxpayer or as shown by assessments duly made as provided in this Article are not paid within twenty (20) days after such are due, the City shall issue a notice to the taxpayer by certified mail, setting forth the name of the taxpayer, the amount of the tax, penalties and interest, the date of the accrual thereof and that the City claims a first and prior lien therefor on the real and tangible personal property of the taxpayer, except as to preexisting claims or liens of a bona fide mortgagee, pledgee, judgment creditor or purchaser whose rights shall have attached prior to the filing of the notice as provided in this Subsection on property of the taxpayer other than on the goods, stock-in-trade and business fixtures of such taxpayer.

(g) Issuance of distraint warrant; filing of lien. Notice of lien shall be on forms prescribed by the Finance Director whose duties are the collection of such tax and may be filed in the Office of the Clerk and Recorder of any county in the State in which the taxpayer owns real or tangible personal property, and the filing of such notice shall create such lien on such property in that county and constitute notice thereof. The Finance Director may issue a distraint warrant as provided in Subsection (i) below at any time when taxes that are due remain unpaid, regardless of whether a notice of tax lien has been issued.

(h) Jeopardy assessment and distraint.

(1) Jeopardy enforcement. If the Finance Director finds that collection of the tax will be jeopardized by delay, in the Finance Director's sole discretion, the Finance Director may declare the taxable period immediately terminated, determine the tax and issue notice and demand for payment thereof, and having done so, the tax shall be due and payable forthwith, and the Finance Director may proceed immediately to collect such tax as provided in Subsection (i) below.

(2) Immediate enforcement action. In any other case wherein it appears that the revenue is in jeopardy, the Finance Director may immediately issue demand for payment; and, regardless of the provisions of Section 3-28-110 hereof, the tax shall be due and payable forthwith and, in the Finance Director's sole discretion, the Finance Director may proceed immediately to collect the tax as provided in Subsection (i) of this Section.

(3) Security for payment. Collection under either Subsection (1) or (2) above may be stayed if the taxpayer gives such security for payment as shall be satisfactory to the Finance Director.

(i) Methods of enforcing collection.

(1) Issuance of distraint. The Finance Director may issue a warrant under the Finance Director's own hand directed to any employee, agent or representative of the Finance Department, sometimes referred to collectively in this Section as "agent" or "revenue collector," or to any sheriff of any county of the State, commanding such person to distraint, seize and sell the personal property of the taxpayer, except such personal property as is exempt from execution and sale by

any statute of this State, for the payment of the tax due together with penalties and interest accrued thereon and cost of execution:

a. When any deficiency in tax is not paid within twenty (20) days from the mailing of notice of final determination, assessment and demand for payment therefor and no hearing has been requested and no appeal from such deficiency assessment has been docketed with any district court of this State within such period;

b. When any other amount of tax, penalty or interest is not paid within twenty (20) days from the mailing of assessment and demand for payment thereof; or

c. Immediately upon making of a jeopardy assessment or of the issuance of a demand for payment as provided in Subsection (h) above.

(2) Distraint seizure; advertisement of sale. The agent charged with the collection shall make or cause to be made an account of the goods or effects distrained, a copy of which, signed by the agent making such distraint, shall be left with the owner or possessor or at the owner's or possessor's usual place of abode with some member of the owner's or possessor's family over the age of eighteen (18) years or at the owner's or possessor's usual place of business with the owner's or possessor's stenographer, bookkeeper or chief clerk or, if the taxpayer is a corporation, shall be left with any officer, manager, general agent or agent for process, with a note of the sum demanded and the time and place of sale; and shall forthwith cause to be published a notice of the time and place of sale, together with a description of the property to be sold in a legal newspaper within the county wherein distraint is made, or, in lieu thereof and in the discretion of the Finance Director, the agent or sheriff shall cause such notice to be publicly posted at the courthouse of the county wherein such distraint is made, and copies thereof to be posted in at least two (2) other public places within such county. The time fixed for the sale shall not be less than ten (10) days nor more than sixty (60) days from the date of such notification to the owner or possessor of the property and the publication or posting of such notices. The sale may be adjourned from time to time by such agent or sheriff if it is deemed advisable, but not for a time to exceed a total of ninety (90) days from the date first fixed for the sale. When any personal property is advertised for sale under distraint, the agent or sheriff making the seizure shall proceed to sell such property at public auction, offering the property at not less than a fair minimum price, including the expenses of making the seizure and of advertising the sale, and if the amount bid for the property at the sale is not equal to the fair minimum price so fixed, the agent or sheriff conducting the sale may declare such to be purchased by such agent or sheriff for the City. The property so purchased may be sold by the agent or the sheriff under such regulations as may be prescribed by the Finance Director. In any case of distraint for the payment of taxes, the goods, chattels or effects so distrained shall be restored to the owner or possessor if, prior to the sale, the amount due is paid, together with the fees and other charges or may be redeemed by any person holding evidence satisfactory to the Finance Director of right of possession.

(3) Certificate of sale; evidence of purchase. In all cases of sale, the agent or sheriff making the sale shall issue a certificate of sale to each purchaser, and such certificate shall be prima facie evidence of the right of the agent or sheriff to make such sale and the conclusive evidence of the regularity of the agent's or sheriff's proceedings in making the sale and shall transfer to the purchaser all right, title and interest in and to the property sold; and where such property consists of certificates of stock in the possession of the agent or sheriff, the certificate of sale shall be notice, when received, to any corporation, company or association of the transfer, and the certificate of such sale shall be authority for such corporation, company or association to record the transfer on its books and records; and where the subject of sale is securities or other evidences

of debt in the possession of the agent or sheriff, the certificate of sale shall be good and valid evidence of title in the person holding such as against any other person. Any surplus remaining above the taxes, penalties, interest, costs and expenses of making the seizure and of advertising the sale shall be returned to the owner or such other person having a legal right thereto, and, on demand, the Finance Director shall render an account in writing of the sale.

(4) Filing and release of lien. Any employee, agent or representative of the City Manager to whom a distraint warrant has been directed may file a notice of lien in such forms as the Finance Director may prescribe with the person in possession of any personal property or right to property belonging to the taxpayer, and if not previously recorded, the filing of such notice of lien shall operate from the date of such filing. The Finance Director may release the lien as to any part or all of the property or rights to property covered by any such lien upon such terms as the Finance Director may deem proper.

(5) Lien released. Any lien for taxes as shown on the records of the County Clerk and Recorder as provided in this Section, upon payment of all taxes, penalties and interest covered thereby, shall be released by the Finance Director in the same manner as mortgages and judgments are released.

(j) Recovery of unpaid tax by action at law.

(1) Action at law. The Finance Director may also treat any such taxes, penalties or interest due and unpaid as a debt due the City from the taxpayer. In case of failure to pay the tax or any portion thereof or any penalty or interest thereon when due, the Finance Director may receive at law the amount of such taxes, penalties and interest in such county or district court of the county wherein the taxpayer resides or has a principal place of business having jurisdiction of the amounts sought to be collected. The return of the taxpayer or the assessment made by the Finance Director as provided in this Article shall be prima facie proof of the amount due.

(2) Writs of attachment. Such actions may be actions in attachment and writs of attachment may be issued to the sheriff, and in any such proceedings no bond shall be required of the Finance Director nor shall any sheriff require of the Finance Director an indemnifying bond for executing the writ of attachment or writ of execution upon any judgment entered in such proceedings, and the Finance Director may prosecute appeals or writs of error in such cases without the necessity of providing bond therefor. It shall be the duty of the City Attorney, when requested by the Finance Director, to commence action for the recovery of taxes due under this Article, and this remedy shall be in addition to all other existing remedies or remedies provided in this Article.

(3) Civil action to enforce lien. In any case where there has been a refusal or neglect to pay any tax due the City and a statement or notice shall have been filed which, under law, creates a lien upon any real property for such tax, the Finance Director may cause a civil action to be filed in the district court of the county in which is situated any real property which is subject to such lien to enforce the lien of the City for such tax upon the real property situated in that county or in any other county in the State which may be subject to such lien or to subject any real property or any right, title or interest in real property to the payment of such tax. The court shall decree a sale of such real property and distribute the proceeds of such sale, according to the findings of such court in respect to the interest of the parties and the City the proceedings in such action, and the manner of sale, the period for and manner of redemption from such sale and the execution of deed of conveyance shall be in accordance with the law and practice relating to foreclosures of mortgages upon real property. In any such action, the court may appoint a receiver of the real property involved in such action if equity so requires.

(k) City as party defendant. In any action affecting the title to real estate or the ownership or rights to possession of personal property, the City may be made a party defendant for the purpose of obtaining an adjudication or determination of its lien upon the property involved therein, and in any such action service of summons upon the Finance Director or any other person permitted by law shall be sufficient service and binding upon the City.

(l) Certificate of discharge.

(1) Subject to lien. If any property, real or personal, under the law shall be subject to a lien for the payment of any tax due the City, the Finance Director may issue a certificate of discharge of any part of the property subject to the lien if the Finance Director finds that the fair market value of that part of such property remaining subject to the lien is at least double the amount of the liability remaining unsatisfied in respect to such tax and the amount of all prior liens upon such property.

(2) Part of property. If any property, real or personal, under the law shall be subject to a lien for the payment of any tax due the City, the Finance Director may issue a certificate of discharge for any part of the property subject to the lien if there is paid over to the Finance Director, in part satisfaction of the liability in respect to such tax, an amount determined by the Finance Director which shall not be less than the value, as determined by the Finance Director, of the interest of the City in the part to be so discharged.

(3) Determination of values. In determining such values, the Finance Director shall give consideration to the fair market value of the part to be so discharged and to such liens thereon as have priority to the lien of the City.

(4) Certificate of release conclusive. A certificate of release or of partial discharge issued under Subparagraph (1) above shall be held conclusive in order that the lien of the City upon the property released therein is extinguished, but shall not extinguish nor release any portion of the lien nor property not specified in the release.

(m) Summons to court for violation of Article. The Finance Director may, at the discretion of the Finance Director, summon to Municipal Court any person who may be in violation of this Article as set forth in Section 3-28-100 hereof and elsewhere in this Article.

(n) Closing agreements.

(1) Satisfaction of liability. For the purpose of facilitating the settlement and distribution of estates, trusts, receiverships, other fiduciary relationships or corporations in the process of dissolution or which have been dissolved, the Finance Director may agree with the fiduciary or director upon the amount of taxes due from the decedent, the decedent's estate, the trust, receivership or other fiduciary relationship or corporation for any of the fiduciary's or director's or its taxable periods under the provisions of the taxes covered by this Article and, except upon a showing of fraud, malfeasance or misrepresentation of a material fact, payment in accordance with such agreement shall be full satisfaction of the taxes for the taxable periods to which the agreement related.

(2) Personal liability. Except as provided in Subsection (4) below, any personal representative of a decedent or of the estate of a decedent or any trustee, receiver or other person acting in a fiduciary capacity or any director of a corporation in the process of dissolution or which has been dissolved who distributes the estate or fund in such person's control without

having first paid any taxes covered by this Article due from such decedent's estate, trust estate, receivership or corporation covered by this Article and which may be assessed within the time limited by this Article shall be personally liable to the extent of the property so distributed, for any unpaid taxes of the decedent, decedent's estate, trust estate, receivership or corporation covered by this Article and which may be assessed within the time limited by this Article.

(3) Notification of liability. The distributee of a decedent's estate or a trust estate or fund or the stockholder of any dissolved corporation who receives any of the property of such decedent's estate, trust estate, fund or corporation shall be liable to the extent of the decedent, trust estate, fund or corporation covered by this Article and which may be assessed within the time limited by this Article. Notice to such distributee or stockholder shall be given in the same manner and within the time limit which would have been applicable had there been no distribution.

(4) Limitation of liability.

a. In case the tax imposed by this Article is due from a decedent or the decedent's estate or by a corporation, in order for personal liability under Subparagraph (2) above to remain in effect, determination of the tax due shall be made and notice and demand therefor shall issue within eighteen (18) months after written request for such determination, filed after the filing of the decedent's final return or filed after the filing of the return of the decedent's estate with respect to which such request is applicable by any personal representative of such decedent or by the corporation, filed after the filing of its return, but a request under this provision shall not extend the period of limitation otherwise applicable.

b. This Subsection will not apply in the case of a corporation unless:

1. Such request notified the Finance Director that the corporation contemplates dissolution at or before the expiration of such eighteen-month period.

2. The dissolution is begun in good faith before the expiration of such eighteen-month period.

3. The dissolution is completed.

c. Upon the expiration of the eighteen-month period, without determination being made and notice and demand being issued, the personal representative or representatives of the decedent and the directors of the corporation no longer will be liable under the provisions of Subparagraph (2) above. (Ord. 1764 §1, 2002)

Sec. 3-28-120. Limitations.

(a) General limitations.

(1) Statutory limitations. Except as provided in this Section, the taxes for any period, together with the interest thereon and penalties with respect thereto, imposed by this Article shall not be assessed nor credit taken nor shall any notice of lien be filed or distraint warrant issued or suit for collection be instituted or any other action to collect such be commenced more than three (3) years after the date on which the tax was or is payable; nor shall any lien continue after such period, except for taxes assessed before the expiration of such period, notice of lien with respect to which has been filed prior to the expiration of such period, in which case such lien shall continue only for one (1) year after the filing of notice thereof. In the case of a false or fraudulent return

with intent to evade the tax or in the case of failure to obtain a license as required by Section 3-28-85 hereof, the tax, together with interest and penalties thereon, may be assessed or proceedings for the collection of such taxes may be commenced at any time.

(2) Date fixed. For purposes of this Section, a tax return filed before the last day prescribed by law or by regulation promulgated pursuant to law for the filing thereof shall be considered as filed on such last day.

(3) Extension of period. Where, before the expiration of the time prescribed in this Section for the assessment of tax, both the Finance Director and the taxpayer have consented in writing to any assessment after such time, the tax may be assessed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

(4) Revision qualification; periods covered. Nothing in this Section shall be construed to limit any right accrued or to revive any liability barred by any statute at the effective date of the ordinance from which this Article derives.

(b) Trust status of tax in possession of retailer. All sums of money paid by the purchaser to the retailer as taxes imposed by this Article shall be and remain public money, the property of the City in the hands of such retailer, and the retailer shall hold the money in trust for the sole use and benefit of the City until paid to the City, and for failure to so pay to the City such retailer shall be punished as provided by law. (Ord. 1764 §1, 2002)

Sec. 3-28-125. Coordinated audit.

(a) Any taxpayer licensed in this City pursuant to Section 3-28-140 hereof and holding a similar sales tax license in at least four (4) other Colorado municipalities that administer their own sales tax collection may request a coordinated audit as provided in this Section.

(b) Within fourteen (14) days of receipt of notice of an intended audit by any municipality that administers its own sales tax collection, the taxpayer may provide to the Finance Director, by certified mail, return receipt requested, a written request for a coordinated audit indicating the municipality from which the notice of intended audit was received and the name of the official who issued such notice. Such request shall include a list of those municipalities utilizing local collection of their sales tax in which the taxpayer holds a current sales tax license and a declaration that the taxpayer will sign a waiver of any passage-of-time-based limitation upon this City's right to recover tax owed by the vendor for the audit period.

(c) Except as provided in Subsection (g) below, any taxpayer who submits a complete request for a coordinated audit and promptly signs a waiver of limitation under Section 3-28-120 hereof may be audited by this City during the twelve (12) months after such request is submitted only through a coordinated audit involving all municipalities electing to participate in such an audit.

(d) If this City desires to participate in the audit of a taxpayer who submits a complete request for a coordinated audit pursuant to Subsection (c) above, the Finance Director shall so notify the Finance Director of the municipality whose notice of audit prompted the taxpayer's request within ten (10) days after receipt of the taxpayer's request for a coordinated audit. The Finance Director shall then cooperate with other participating municipalities in the development of arrangements for the coordinated audit, including arrangement of the time during which the coordinated audit will be

conducted, the period of time to be covered by the audit, and a coordinated notice to the taxpayer of those records most likely to be required for completion of the coordinated audit.

(e) If the taxpayer's request for a coordinated audit was in response to a notice of audit issued by this City, this City's Finance Director shall facilitate arrangements between this City and other municipalities participating in the coordinated audit unless and until an official from some other participating municipality agrees to assume the responsibility. The Finance Director shall cooperate with other participating municipalities to, whenever practicable, minimize the number of auditors that will be present on the taxpayer's premises to conduct the coordinated audit on behalf of the participating municipalities. Information obtained by or on behalf of those municipalities participating in the coordinated audit may be shared only among such participating municipalities.

(f) If the taxpayer's request for a coordinated audit was in response to a notice of audit issued by this City, this City's Finance Director shall, once arrangements for the coordinated audit between the City and other participating municipalities are completed, provide written notice to the taxpayer of which municipalities will be participating, the period to be audited and the records most likely to be required by participating municipalities for completion of the coordinated audit. The Finance Director shall also propose a schedule for the coordinated audit.

(g) The coordinated audit procedure set forth in this Section shall not apply:

- (1) When the proposed audit is a jeopardy audit;
- (2) To audits for which a notice of audit was given prior to the effective date of the ordinance from which this Section derives;
- (3) When a taxpayer refuses to promptly sign a waiver of Section 3-28-120 hereof; or
- (4) When a taxpayer fails to provide a timely and complete request for a coordinated audit as provided in Subsection (b) above. (Ord. 1764 §1, 2002)

Sec. 3-28-130. Claims for recovery.

(a) The intent of this Section is to streamline and standardize procedures related to situations where tax has been remitted to the incorrect municipality. It is not intended to reduce or eliminate the responsibilities of the taxpayer or vendor to correctly pay, collect and remit sales and use taxes to the City.

(b) As used in this Section, the term *claim for recovery* means a claim for reimbursement of sales and use taxes paid to the wrong taxing jurisdiction.

(c) When it is determined by the Finance Director that sales and use tax owed to the City has been reported and paid to another municipality, the City shall promptly notify the vendor that the taxes are being improperly collected and remitted, and that as of the date of the notice the vendor must cease improper tax collections and remittances.

(d) The City may make a written claim for recovery directly to the municipality that received the tax and/or penalty and interest owed to the City or, in the alternative, may institute procedures for collection of the tax from the taxpayer or vendor. The decision to make a claim for recovery lies in the sole discretion of the City. Any claim for recovery shall include a properly executed release of claim from the taxpayer and/or vendor releasing its claim to the taxes paid to the wrong municipality,

evidence to substantiate the claim, and a request that the municipality approve or deny, in whole or in part, the claim within ninety (90) days of its receipt. The municipality to which the City submits a claim for recovery may, for good cause, request an extension of time to investigate the claim, and approval of such extension by the City shall not be unreasonably withheld.

(e) Within ninety (90) days after receipt of a claim for recovery, the City shall verify to its satisfaction whether or not all or a portion of the tax claimed was improperly received and shall notify the municipality submitting the claim in writing that the claim is either approved or denied in whole or in part, including the reasons for the decision. If the claim is approved in whole or in part, the City shall remit the undisputed amount to the municipality submitting the claim within thirty (30) days of approval. If a claim is submitted jointly by a municipality and a vendor or taxpayer, the check shall be made to the parties jointly. Denial of a claim for recovery may only be made for good cause.

(f) The City may deny a claim on the grounds that it has previously paid a claim for recovery arising out of an audit of the same taxpayer.

(g) The period subject to a claim for recovery shall be limited to the thirty-six-month period prior to the date the municipality that was wrongly paid the tax receives the claim for recovery. (Ord. 1764 §1, 2002)

Sec. 3-28-140. Sales tax license required; term.

It shall be unlawful for any person to engage in the business of selling tangible personal property at retail without first having obtained a license therefor. Such license shall be granted and issued by the City Clerk or designee and shall be in force and effect until the thirty-first day of December of the year in which it is issued, unless sooner revoked. (Ord. 635 §3(3-1), 1970; Ord. 1764 §1, 2002)

Sec. 3-28-150. Sales tax license required for separate places of business.

In case business is transacted at more than one (1) premises by one (1) person, a separate license for each separate place of business shall be required. (Ord. 635 §3(3-4), 1970; Ord. 1764 §1, 2002)

Sec. 3-28-160. Contents of application.

Such licenses shall be granted and renewed only upon application stating the name and address of the person desiring such a license, the name of such business, the location and such other facts as the City Clerk may require. (Ord. 635 §3(3-2), 1970; Ord. 1764 §1, 2002)

Sec. 3-28-170. Renewal of license; licensee's duties.

It shall be the duty of each licensee, on or before January 1 of each year during which this Article remains in effect, to obtain a renewal of such license if the licensee remains in the retail business or is liable to account for the tax provided in this Article; however, nothing contained in this Article shall be construed to empower the City Clerk to refuse such renewal, except revocation for cause of the licensee's prior license. (Ord. 635 §3(3-3), 1970; Ord. 1764 §1, 2002)

Sec. 3-28-180. License fee.

For each license issued under this Article, a fee in an amount as set by resolution of the City Council shall accompany the application. An additional fee shall be paid for each year or fraction thereof for which the license is renewed. (Ord. 722 §1, 1972; Ord. 1589, 1999; Ord. 1764 §1, 2002)

Sec. 3-28-190. License contents; posting; nontransferability.

Each license shall be numbered and shall show the name, residence, place and character of business of the licensee and shall be posted in a conspicuous place in the place of business for which it is issued. No license shall be transferable. (Ord. 635 §3(3-6), 1970; Ord. 1764 §1, 2002)

Sec. 3-28-200. Exception to license.

No license shall be required for any person engaged exclusively in the business of selling commodities which are exempt from taxation under this Article. (Ord. 635 §3(3-7), 1970; Ord. 1764 §1, 2002)

Sec. 3-28-210. Unlicensed sales prohibited.

Any person engaged in the business of selling tangible personal property at retail in the City, without having secured a license therefor, except as specifically provided herein, shall be guilty of a violation of this Article. (Ord. 635 §3(3-5), 1970; Ord. 1764 §1, 2002)

Sec. 3-28-220. Amendments.

The rate of sales tax, the items taxed and exempted from the sales tax hereunder, and the pledge and use of the sales tax revenues provided for herein shall not be amended, altered, deleted or changed without being submitted to the electors of the City for their approval. Other provisions of this Article may be amended, altered, deleted or changed by the adoption of an amending ordinance in accordance with law and without being submitted to the electors of the City for their approval. (Ord. 635 §6(6-2), 1970; Ord. 1379 §4, 1991; Ord. 1764 §1, 2002)

Sec. 3-28-230. Violation; penalty.

Any person convicted of violating any of the provisions of Sections 3-28-10 through 3-28-40, 3-28-60 and 3-28-80 through 3-28-220 shall be punishable as provided in Article 1-24 of this Code. (Ord. 635 §7, 1970; Ord. 1589, 1999; Ord. 1764 §1, 2002)

ARTICLE 3-32

Use Tax

Division I. General Provisions

Sec. 3-32-10. Purpose.

The purpose of this Article is to raise revenue and provide a complementary tax to the City sales tax. The taxes imposed in this Article are a use tax on building and construction materials which are purchased outside the City for use, storage or consumption within the City, and a similar use tax imposed on motor vehicles purchased outside the City by City residents for use, storage or consumption within the City. (Prior code §2-500; Ord. 753 §1(part), 1973; Ord. 1589, 1999; Ord. 1764 §2, 2002)

Sec. 3-32-20. Definitions.

For the purpose of this Article, the definitions of the words contained in this Article shall be as defined in Section 3-28-20 of this Chapter. (Prior code §2-501; Ord. 753 §1(part), 1973; Ord. 1764 §2, 2002)

Sec. 3-32-30. Imposition; amount.

There is imposed on the privilege of storing, using or consuming any construction and building materials of every kind and form purchased outside the City for use, storage or consumption within the City a use tax of three and three-fourths percent (3¾%) of the retail purchase price of the construction or building materials. (Ord. 1764 §2, 2002)

Sec. 3-32-40. Application and exemptions.

In no event shall the use tax imposed by this Article extend or apply to the following:

- (a) Storage, use or consumption of any tangible personal property the sale of which is subject to a retail sales tax imposed by the City;
- (b) Storage, use or consumption of any tangible personal property purchased for resale in the City, either in its original form or as an ingredient of a manufactured or compounded product, in the regular course of a business;
- (c) Storage, use or consumption of tangible personal property brought into the City by a nonresident thereof for his or her own storage, use or consumption while temporarily within the City;
- (d) Storage, use or consumption of tangible personal property by the United States government, or the State or its institutions, or its political subdivisions in their governmental capacities only or by religious or charitable corporations in the conduct of their regular religious or charitable functions;
- (e) Storage, use or consumption of tangible personal property by a person engaged in the business of manufacturing, compounding for sale, profit or use any article, substance or commodity, which tangible personal property enters into the processing of or becomes an ingredient or component part of the product or service which is manufactured, compounded or furnished and the container, label or the furnished shipping case thereof;
- (f) Storage, use or consumption of any article of tangible personal property the sale or use of which has already been subjected to a sales or use tax of another county, city or town equal to or in excess of that imposed by this Article. A credit shall be granted against the use tax imposed by this Article with respect to a person's storage, use or consumption in the City of tangible personal property purchased by him or her elsewhere. The amount of the credit shall be equal to the tax paid by him or her by reason of the imposition of a sales or use tax of another county, city or town on his or her purchase or use of the property. The amount of the credit shall not exceed the tax imposed by this Article;
- (g) Storage, use or consumption of tangible personal property and household effects acquired outside of the City and brought into it by a nonresident acquiring residency;
- (h) Storage or use of a motor vehicle if the owner is or was, at the time of purchase, a nonresident of the City, and he or she purchased the vehicle outside of the City for use outside the

City and actually so used it for a substantial and primary purpose for which it was acquired, and he or she registered, titled and licensed the motor vehicle outside of the City;

(i) Storage, use or consumption of any construction and building materials and motor and other vehicles on which registration is required, if a written contract for the purchase thereof was entered into prior to the effective date of such use tax; and

(j) Storage, use or consumption of any construction and building materials required or made necessary in the performance of any construction contract bid, let or entered into at any time prior to the effective date of such use tax ordinance or proposal. (Prior code §2-502; Ord. 753 §1(part), 1973; Ord. 1589, 1999; Ord. 1764 §2, 2002)

Sec. 3-32-45. Amendments.

The rate of use tax, the items taxed and exempted from the use tax hereunder, and the pledge and use of the use tax revenues provided for herein shall not be amended, altered, deleted or changed without being submitted to the electors of the City for their approval. Other provisions of this Article may be amended, altered, deleted or changed by the adoption of an amending ordinance in accordance with law and without being submitted to the electors of the City for their approval. (Ord. 1379 §9, 1991; Ord. 1764 §2, 2002)

Division 2. Building and Construction Use Tax

Sec. 3-32-50. Distribution of revenues.

The net revenues derived from the City's three-and-three-fourths-percent (3¾%) use tax shall be distributed and used as follows:

(1) The net revenues derived from a rate of use tax equal to seventy-five one-hundredths percent (.75%) shall be used solely for the operation and maintenance of City parks and recreational facilities, and such revenues are hereby pledged for such purpose.

(2) The net revenues derived from a rate of use tax equal to three percent (3%) shall be credited to the General Fund and used for such purposes as the City Council shall determine. (Ord. 1764 §2, 2002)

Sec. 3-32-60. Payment requirements; exemption certificate.

(a) The use tax imposed by Section 3-32-30 may be paid by estimate at the option of the taxpayer through payment to the City of an amount equal to three and three-fourths percent (3¾%) of fifty percent (50%) of the total cost of the project as indicated on the application for the City building permit. The City shall, upon receipt of such payment, issue a certificate of exemption from payment of any further sales or use tax for the materials to be used, stored or consumed pursuant to such building permit.

(b) As an alternative to the estimate procedure provided for in Subsection (a) above, payment of said use tax may be made upon completion of the building project and prior to issuance of a certificate of occupancy. In such event the taxpayer shall file an affidavit with the City stating that the taxpayer will account to the City for any use tax due and payable for the construction project at the time of application for a certificate of occupancy and payment thereof will be made at such time.

Every applicant for a building permit who uses the alternative procedure provided for in this Section shall maintain and preserve detailed purchase and receipt records which shall be subject to inspection and audit by the City and any unpaid use tax shall be subject to collection by the City. (Ord. 1145 §2, 1984; Ord. 1379 §6, 1991; Ord. 1764 §2, 2002)

Sec. 3-32-70. Collection and administration.

The collection and administration of the use tax imposed by Section 3-32-30 shall be performed by the Finance Director in substantially the same manner as the collection, administration and enforcement of the sales and use tax as provided in Sections 3-28-10 through 3-28-220 of this Chapter. The City Manager is authorized to promulgate such additional rules and regulations as may be necessary for the proper administration or enforcement of Sections 3-32-50 through 3-32-70 hereof. (Prior code §2-503(C); Ord. 753 §1(part), 1973; Ord. 907 §2(part), 1976; Ord. 1764 §2, 2002)

Division 3. Motor Vehicle Use Tax

Sec. 3-32-80. Imposition; amount.

There is imposed on the privilege of using, storing or consuming every motor or other vehicle purchased at retail outside the City by any resident of the City for the purpose of use, storage or consumption within the City a use tax in the amount of three and three-fourths percent (3¾%) of the retail purchase price of the motor vehicle. (Prior code §2-504(A); Ord. 753 §1(part), 1973; Ord. 907 §3(part), 1976; Ord. 1379 §7, 1991; Ord. 1764 §2, 2002)

Sec. 3-32-90. Applicability.

The use tax imposed by Section 3-32-80 hereof shall be applicable to every motor vehicle for which registration is required by the laws of the State. (Prior code §2-504(B); Ord. 753 §1(part), 1973; Ord. 907 §3(part), 1976; Ord. 1764 §2, 2002)

Sec. 3-32-100. Payment prerequisite to registration and issuance of title.

No registration shall be made of any motor vehicle for which registration is required, and no certificate of title shall be issued for such vehicle by the Department of Revenue or its authorized agents until any tax due upon the use, storage or consumption thereof pursuant to this Article has been paid. (Prior code §2-504(C); Ord. 753 §1(part), 1973; Ord. 907 §3(part), 1976; Ord. 1589, 1999; Ord. 1764 §2, 2002)

Sec. 3-32-110. Collection.

The use tax imposed by Section 3-32-80 hereof shall be collected by the authorized agent of the Department of Revenue in the county in which the purchaser resides. (Prior code §2-504(D); Ord. 753 §1(part), 1973; Ord. 907 §3(part), 1976; Ord. 1764 §2, 2002)

Sec. 3-32-120. Payment of proceeds by County to City.

The proceeds of the use tax imposed by Section 3-32-80 hereof shall be paid to the City periodically in accordance with an agreement entered by and between the City and the authorized county agent of the Department of Revenue. (Prior code §2-504(E); Ord. 753 §1(part), 1973; Ord. 907 §3(part), 1976; Ord. 1764 §2, 2002)

Sec. 3-32-130. Administration and enforcement agreements authorized.

The City Manager and the Mayor are empowered to enter into and execute on behalf of the City any agreements necessary for the administration and enforcement of this Section and Sections 3-32-80 through 3-32-120, in accordance with the provisions of Part 6(3)(b), Article 2, Title 29, C.R.S., as amended. (Prior code §2-504(F); Ord. 753 §1(part), 1973; Ord. 907 §3(part), 1976; Ord. 1764 §2, 2002)

Sec. 3-32-140. Violation; penalty.

Any person who shall violate any of the provisions of this Article shall be guilty of a violation and upon conviction shall be punishable as provided in Article 1-24 of this Code. (Ord. 753 §3, 1973; Ord. 907 §4, 1976; Ord. 1764 §2, 2002)

ARTICLE 3-36

Telephone Utility Company Occupation Tax

Sec. 3-36-10. Levy of tax.

There is levied on and against each telephone utility company operating within the City a tax on the occupation and business of maintaining a telephone exchange and lines connected therewith in the City, and of supplying local exchange telephone service to the inhabitants of the City. So long as this Article remains in force and effect, the annual amount of tax levied under it shall be four dollars (\$4.00) for each telephone account for which local telephone service is provided by a tax-paying telephone utility company within the corporate limits of the City on January 1 of the current year for which the tax is levied. (Ord. 988 §1(part), 1978)

Sec. 3-36-20. Effective date.

The tax levied by this Article shall be effective on January 1, 1979, and shall remain in effect as an annual tax so long as this Article remains in force and effect; provided, however, that each annual tax payable under this Article shall be due and payable in twelve (12) equal monthly installments with the first such installment being payable February 1, 1979. Thereafter, each monthly installment shall be payable on the first day of each consecutive month subject to determination effective January 1 of each year of the total annual amount payable under this Article in accordance with the total number of telephone accounts for which local exchange telephone service was provided within the corporate limits of the City on January 1 of the then-current year as shown on the statement required by Section 3-36-30. (Ord. 988 §1(part), 1978)

Sec. 3-36-30. Filing of statement.

On or before February 1 of each year commencing February 1, 1979, each telephone utility company subject to this Article shall file with the Director of Finance in such form as the Director of Finance may require, a statement showing the total telephone accounts for which local exchange telephone service was provided within the corporate limits of the City on January 1 of the current year. Such statement shall be accompanied by the first monthly installment payment of the tax for the current year as provided in Section 3-36-20. (Ord. 988 §1(part), 1978)

Sec. 3-36-40. Failure to pay tax.

If any telephone utility company subject to the provisions of this Article fails to pay the taxes as provided in this Article, including any installment thereof, the full annual amount thereof shall be due and payable by such company, and the same, together with interest thereon computed at the rate of one percent (1%) per month on the unpaid balance of taxes due, plus expenses of collection incurred by the City, including reasonable attorney's fees, is a debt due and owing from such company to the City. The City Attorney, upon the direction of the City Council, shall commence and prosecute to final judgment and determination in any court of competent jurisdiction an action at law to collect the debt on behalf of the City. (Ord. 988 §1(part), 1978)

Sec. 3-36-50. Inspection of records.

The Director of Finance or his or her duly authorized representatives shall have the right at all reasonable hours and times to examine the books and records of any telephone utility company which is subject to the provisions of this Article and to make copies of the entries or contents thereof. (Ord. 988 §1 (part), 1978)

Sec. 3-36-60. Local purpose.

The tax provided for in this Article is upon occupations and businesses in the performance of local functions and is not a tax upon those functions related to interstate commerce. It is expressly understood that none of the terms of this Article shall be construed to mean any telephone utility company is or shall be issued a franchise by the City. (Ord. 988 §1 (part), 1978)

Sec. 3-36-70. Tax in lieu of other taxes, fees or charges.

(a) Except as provided in this Article, the tax authorized by this Article shall be in lieu of all other payments by, or fees or taxes on, any telephone utility subject to the provisions of this Article, and in addition shall be in lieu of any free telephone services furnished the City by any said telephone utility.

(b) The tax provided for in this Article shall not be in lieu of ad valorem taxes, special property assessments for local improvements or fees imposed for excavations in any street, alley, sidewalk or other public place owned by the City. (Ord. 988 §1(part), 1978)

Sec. 3-36-80. Violations; penalties.

(a) It is unlawful for any person to violate any provision or fail to comply with any of the requirements of this Article. Any person who violates any of the provisions of this Article shall be punishable by a fine of not more than three hundred dollars (\$300.00) or by imprisonment for a period of not more than ninety (90) days or by both such fine and imprisonment. Each such person is guilty of a separate offense for each and every day during any portion of which any violation of any provision of this Article is committed, continued or permitted by such person and shall be punished accordingly.

(b) In any case of a failure to comply with any provision of this Article, the City or any person affected by such failure may, in addition to the penalties provided by law, initiate a civil action for injunction, mandamus, abatement or any other appropriate relief to prevent, enjoin, abate, remove or eliminate such violation of this Article. (Ord. 988 §2, 1978)

